



# *Georgia Procurement Manual*

## **Department of Administrative Services State Purchasing Division**

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A handwritten signature in black ink, appearing to read "Brad Douglas", with a long, sweeping flourish extending to the right.

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Brad Douglas, Commissioner

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*Georgia Procurement Manual***Document Revisions**

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***Global Change: July 2009***

<b>Section</b>	<b>Revision</b>
Entire Manual	Replaced “APO” with “APO/CUPO”. Replaced “Agency(ies)” with “State Entity” or “State Entities” as appropriate.

***Chapter 1: Revisions: July 2009***

<b>Section</b>	<b>Revision</b>
Section 1.1	“Purpose”: Additional text was added to clarify that the purpose of the GPM is to publish the administrative rules issued by DOAS through SPD governing state entities’ purchases.
Section 1.2	“Applicability and Use of the GPM”: Added definition of “CUPO.”
Section 3	“Public Access to Procurement Information”: This section was rewritten to define the more specific public access requirements of the State Purchasing Act.

***Chapter 2: Revisions: July 2009***

<b>Section</b>	<b>Revision</b>
Section 2.3	“Agency Procurement Officer”: Renamed section “Designated Procurement Officer” and added additional information regarding SPD’s approval of the designated procurement officer and the officer’s responsibilities.
Section 3	“Exemptions from State Purchasing Requirements”: A new subsection was added to identify the exemption for contracts for



services with non-profit entities. In addition, a new subsection was added to reference the list of exempt goods/services identified by NIGP™ Code, which is available on the SPD website.

Section 4.1	“Delegated Purchasing Authority”: The text of this section was replaced in its entirety with a general provision regarding SPD’s authority to delegate, revise and revoke purchasing authority to state entities.
Section 4.3	“Exceeding Delegated Purchasing Authority”: The text of this section was modified to remove any reference to a monetary cap regarding SPD’s authority to grant DPA or permit a state entity to exceed its existing DPA in a particular solicitation. The text regarding the process for a state entity to request authority to exceed its existing DPA was revised for clarity, including providing a link to the online form to be utilized during this process.
Section 4.5	“Delegated Purchasing Authority for a Request for Proposal”: The text of this section was replaced in its entirety with a general provision regarding the statutory requirement that the RFP process may not be utilized unless SPD first certifies in writing that the RFQ process will not be practicable or advantageous to the State but that the state entity may make the certification for those RFPs within its DPA.
Section 5.3	“Statutory Mandatory Sources”: The text of this section was revised to provide greater clarity regarding the purchase of products from GEPS.

### ***Chapter 3: Revisions: July 2009***

<b>Section</b>	<b>Revision</b>
Section 1.1	“Policy”: This section was renamed “Fundamental Administrative Rules”. Additional text was added to clarify the rule requiring state entities to compete all purchases of \$5,000 or more.
Section 1.2	“Procedure”: The text of this section was revised to remove the exception, which permitted solicitations of at least \$5,000 but less than \$10,000 not to be publicly advertised.
Section 2.1	“Policy”: This section was updated to provide greater clarity regarding the order of precedence.

Section 5.2	“Procedure”: The text of this section was modified to remove any reference to a monetary cap regarding SPD’s authority to grant DPA. The remaining text was slightly condensed.
Section 5.3	“Minimum Bid Policy”: Renamed “Minimum Publication Policy.” This section was condensed and defines the minimum public notice requirement for solicitations.
Section 5.4	“eQuote Bids”: Renamed this section “Team Georgia Marketplace™” to add information regarding this system. Renumbered “eQuote Bids” as Section 5.5.
Section 5.5	“Informal Written Solicitations”: Deleted this section in its entirety. Renamed this section “eQuote” and moved provisions regarding eQuote to this section to accommodate insertion of new section regarding Team Georgia Marketplace™. Text of the eQuote provisions was updated to (1) formalize SPD’s official announcement regarding mandatory use of the eQuote system unless an exception applies, (2) remove any reference to public openings or random selection of registered vendors, and (3) update the “Notice of Award Policy” table.
Section 5.6	“Formal Sealed Bids”: Text was revised to remove the exception, which permitted solicitations of at least \$5,000 but less than \$10,000 not to be publicly advertised. Text was added to clarify that the bid posting table identified in the section addressing eQuote is applicable to all RFQs posted to eQuote. Text was also added to identify a price preference to be granted to Georgia Enterprises for Products and Services as indicated by DOAS. In addition, a table of reasons for rejecting bidders was added. The subsection addressing coding requirements was modified to remove any reference to the “99999” code and to clarify the use of the new “MUL” code. Finally, this section was updated to remove any reference to public bid openings.
Section 5.7	“Competitive Sealed Proposals”: The text of this section was replaced in its entirety with a more detailed description of the RFP process, which is organized by stage and references several SPD official forms which must be utilized by the state entity. In addition, text was added to clarify that SPD may delegate authority to a state entity to conduct rounds of negotiations. Finally, text was added to identify a price preference to be granted to Georgia Enterprises for Products and Services (GEPS) for products and services associated with the State Use Program.
Section 5.11	“Electronic Solicitation”: Revised text of this section to provide additional clarification regarding the electronic solicitation

process.

Section 5.12	“Public Notice”: Minor change to clarify use of the Notice of Intent to Award for awards less than \$100,000 is recommended by SPD.
Section 6.8	“Statewide Contracts”: A subsection within this section was revised to clarify DOAS’ authority with respect to moneys, rebates or commissions.
Section 6.9	“Sole Source”: Add text to clarify exemption for contracts with non-profit entities is limited to contracts for services.
Section 6.12	“Purchasing Card”: Minor revisions were made to this section including referencing Team Georgia Marketplace™, providing additional clarification on “allowable” and “prohibited” purchases, and increasing the permissible cardholder cycle limit.
Section 6.16	“Agency Contract Index”: New section added to define use of the Agency Contract Index.

### ***Chapter 5: Revisions: July 2009***

<b>Section</b>	<b>Revision</b>
Section 1	“Contracting for Construction”: Add definition of public works contract and reserve right to conduct public openings at state entity’s discretion.

### ***Chapter 6: Revisions: July 2009***

<b>Section</b>	<b>Revision</b>
Section 3.6	“Contract Specialist Responsibilities”: Renamed “Contract Administration Function”. Revised section to refer to statewide contract to establish procedures for vendors’ remittance of administrative fees.

***Chapter 9: Revisions: July 2009***

<b>Section</b>	<b>Revision</b>
Section 1	“Formal Protest and Informal Complaint Process”: This section has been renamed “Protests”. The text of this section has been substantially revised to reflect a new protest policy. Material policy changes include, but are not limited to, removing the distinction between informal complaints and formal protests, authorizing DOAS to resolve all protests (regardless of dollar value), and define the appeal process as discretionary for contract awards less than \$100,000.

***Glossary: Revisions: July 2009***

<b>Section</b>	<b>Revision</b>
Section 1	“Glossary”: Add definition of “CUPO”.
Section 2	“Definitions”: Revised definitions for “Construction Contract” and “Construction.” Added definition for “Public Works Contract.”

# Chapter 1: General Provisions

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## ***Section 1: Purpose and Application***

### **1.1 Purpose**

The purpose of this Georgia Procurement Manual (hereinafter “GPM” or the “Manual”) is to publish the administrative rules issued by the Department of Administrative Services (“DOAS”), through its State Purchasing Division. These administrative rules govern the purchasing activities of all state government entities subject to DOAS’ authority and are intended to support the following purposes:

1. Simplify and clarify the law governing procurement by the State of Georgia.
2. Permit the continued development of centralized procurement policies and practices.
3. Make as consistent as possible the procurement regulations among the various state agencies.
4. Provide for increased public confidence in the procedures followed in public procurement.
5. Ensure the fair and equitable treatments of all persons who deal with the procurement system of Georgia.
6. Provide increased economy in state procurement activities, maximize to the fullest extent possible the purchasing value of public funds; obtain in a cost-effective and responsive manner the materials, services, and construction required by state agencies in order for those agencies to better serve Georgia’s businesses and residents.
7. Foster effective broad-based competition within the free enterprise system.
8. Provide safeguards for the maintenance of a procurement system of quality and integrity.

### **1.2 Applicability and Use of the GPM**

This GPM applies only to procurements initiated after February 1, 2003. The Manual will supersede the State Entity Procurement Manual (APM) and any revisions to the APM issued prior to the effective date of the GPM. Solicitations publicly issued prior to the effective date of the GPM will be governed by the APM.

The GPM is the primary source of reference for the Agency/College/University Procurement Officer (hereinafter “APO/CUPO”). The APO/CUPO should use the GPM when encountering any purchasing questions or problems concerning the procurement process.

### 1.3 Requirement of Good Faith

This GPM requires all parties involved in the negotiation, performance, or administration of Georgia contracts to act in good faith.

## Section 2: Purchasing Laws and Regulations

### 2.1 Official Code of Georgia (O.C.G.A.) Governing Legal Authority

The purpose of this section is to provide reference to the legal authority for purchasing in the State of Georgia.

1. Laws concerning the Department of Administrative Services (hereinafter “DOAS”) procurement process in general may be found in the *Official Code of Georgia Annotated* (hereinafter “O.C.G.A.”) Title 50, Chapter 5, Article 3. The regulations set forth in this Manual are established pursuant to the DOAS authority under O.C.G.A. 50-5-54.
2. The APO/CUPO should be familiar with all current laws governing purchases in order to assure that the legal requirements with respect to State Entity procurement activities are met. The pertinent laws that govern State purchases are generally set forth in O.C.G.A., Section 50-5-50 through Section 50-5-81. In addition, the published opinions of the Attorney General contain legal interpretations of the purchasing laws, which have the weight of the law in guiding State purchases. The State Purchasing Division (hereinafter “State Purchasing” or “SPD”) bases its operating policies and procedures upon the law and the opinions of the Attorney General.
3. State Purchasing does not attempt to render legal opinions for State Entities. However the SPD will assist the APO/CUPO in obtaining legal advice with regard to State purchases from the Attorney General where needed. Any such request should be addressed in writing to the State Purchasing Division Assistant Commissioner (hereinafter “SPDAC”).

### 2.2 Official Code of Georgia (O.C.G.A.) Governing Administrative Authority

The purpose of this section is to provide reference to the governing administrative authority for purchasing in the State of Georgia. Although every effort has been taken to assure the accuracy of the material presented, it is not intended or represented to be the official record of the laws and regulations of the State of Georgia. True and correct copies of the statutes of this State are found in the Official Code of Georgia. If any information in this manual is inconsistent with the O.C.G.A., the Code controls.

1. The APO/CUPO should be familiar with the rules and regulations governing purchases as issued by the SPDAC.
2. The operating policies and procedures contained in this Manual are intended to comprise the body of rules and regulations pertinent to State purchases.

3. The SPDAC will issue procedural and informational guidelines and instructions in the form of Official Memorandums. These guidelines and instructions may result in revisions to the GPM.
4. Questions and clarifications concerning the GPM should be submitted to the SPD, Compliance and Standards Manager.

## **2.3 Deviations**

A deviation may be deemed necessary for circumstances in which the prescribed policies, procedures and provisions are not totally appropriate for the development of a new technique or approach, or for specific contractual situations. The term “deviation” includes:

1. The issuance and/or use of any policy, procedure, provision, or instruction of any kind at any stage of the procurement process, which is inconsistent with a policy, procedure, or provision, set forth in the GPM or provision directive governed by State Entities and others subject to the Purchasing Act.
2. The use of a clause or provision covering the same subject matter as a prescribed clause or provision, or the modification or omission of a prescribed clause or provision.

To maintain uniformity to the maximum extent possible, deviations should be kept to a minimum. It is the responsibility of the APO/CUPO or designee to request a deviation. A request for approval of any deviation shall be in writing to the SPDAC. The request shall explain the nature of the deviation, provide reasons why a deviation is necessary, and explain why it is in the best interest of the State of Georgia to grant the deviation. The SPDAC will review the deviation and determine whether the request can be approved. The deviation request and the action taken shall be documented in the contract file.

## **2.4 Duties and Powers of the State Auditor**

It is among the duties and powers of the State Auditor to call special attention to any illegal, improper or unnecessary expenditures, and all inaccuracies, irregularities and shortages, and make specific recommendations for future avoidance. It is the responsibility of the APO/CUPO to determine that the State Entity's purchase requests abide by the rulings of the State Auditor.

## **2.5 Purchases Contrary to Purchasing Rules**

A purchase that is contrary to the rules and regulations established by State Purchasing shall be void and of no effect.

## **Section 3: Public Access to Procurement Information**

Solicitation opportunities will be publicly advertised as required by the provisions of this manual. The State Purchasing Act delays the release of certain procurement records in the event the public disclosure of those records prior to the State Entity's public announcements

of the results of a solicitation would undermine the public purpose of obtaining the best value for the State such as cost estimates, proposals/bids, evaluation criteria, vendor evaluations, negotiation documents, offers and counter-offers, and certain records revealing preparation for the procurement.

Notwithstanding the Open Records Act, the State Purchasing Act requires bids and proposals to be available to public inspection, upon request, within one business day of the State Entity's posting of the Notice of Intent to Award (or the Notice of Award in the event the State Entity does not issue the Notice of Intent to Award). Audited financial statements not otherwise publicly available but required to be submitted in the proposal, offer, or proposal shall not be subject to public disclosure.

The State Entity is allowed to assess a reasonable charge to defray the cost of reproducing documents. A state employee should be present during the time of onsite inspection of documents.

## **Section 4: Web Site Information**

This section lists the information that is available on the State Purchasing web site, which is located at [statepurchasing.doas.georgia.gov](http://statepurchasing.doas.georgia.gov).

### **4.1 Georgia Procurement Registry**

Government buyers who are registered in the system can post bids and other procurement opportunities. Vendors can review a list of current solicitation opportunities. In addition to solicitation opportunities, vendors can also review all awards issued for the current and previous fiscal year.

### **4.2 Vendor Registration**

Vendors can obtain information about the vendor registration process and register to do business with the State of Georgia online.

### **4.3 NIGP Codes – Lists and Searches**

State Purchasing began using the National Institute of Government Purchasing (NIGP) commodity codes in 1999 to bring purchasing procedures into greater conformity with national standards. The DOAS web site includes information on how to search by keyword and by vendors registered by NIGP code.

### **4.4 Purchasing Contracts**

An index listing of current statewide contracts including links to contract information.

### **4.5 State Purchasing Staff Directory**

A list of State Purchasing Division contacts with e-mail addresses.



#### **4.6 State Entity Procurement Contacts**

A list of State Entity Purchasing Officers (APO/CUPOs) and their contact information.

#### **4.7 Vendor Tools**

Includes detailed information about the state's procurement process and requirements for vendors.

#### **4.8 State Entity Tools**

Manuals, guides, forms, and templates that govern the State's Procurement Process.

#### **4.9 Mandatory Source**

A list of the procurement sources regulated by the Georgia Code and a link to the web site for each source.

#### **4.10 Related Web Sites**

The following web sites provide additional information:

- DOAS: [doas.georgia.gov](http://doas.georgia.gov)
- Governor's Small Business Center: <http://www.georgia.org/gsbcc/index.html>
- State or Federal Surplus: <http://gasurplus.doas.state.ga.us/apps/gss/surplus.nsf>
- Georgia Correctional Industries: [www.gci-ga.com](http://www.gci-ga.com)
- Georgia Enterprises: [www.georgiaenterprises.com](http://www.georgiaenterprises.com)
- NIGP: [www.nigp.org](http://www.nigp.org)
- Official Code of Georgia (This is the Georgia web page for laws and regulations where you can search by code number.):  
[http://www.georgia.gov/00/channel/0,2141,4802\\_5031,00.html](http://www.georgia.gov/00/channel/0,2141,4802_5031,00.html)
- National Contract Management Association: <http://www.ncmahq.org/>

## **Chapter 2: Procurement Organization**

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### ***Section 1: Authority of DOAS, State Purchasing Division***

#### **1.1 Purchases by State Governmental Entities**

Through the State Purchasing Division, DOAS has the authority and is the unit of state government charged with the responsibility for the establishment of contracts, leases, purchase orders or other agreements for the procurement of supplies, materials, equipment, services, and construction, and for overseeing statewide and multi-State Entity contracts. All state offices, State Entities, departments, boards, commissions, institutions, and other entities of the state are required to purchase through DOAS unless specifically exempted by statute or regulation.

#### **1.2 Purchases by Local Political Subdivisions**

Local political subdivisions, including counties, municipalities, and school boards are authorized by state law to purchase their supplies, materials, and equipment through DOAS if they so desire. Purchases pursuant to this authorization may take the form of one-time open market purchases or statewide contracts specifically open to use by local political subdivisions. All products offered by bidders/offerors pursuant to statewide contracts may be offered to local political subdivisions as well as State Entities at the option of the bidder/offeror.

### ***Section 2: Authority and Duties of Procurement Officials***

#### **2.1 DOAS Commissioner**

The Commissioner is the Chief Procurement Officer of the State and is authorized to adopt rules and regulations as may be required to carry out the procurement, management, control, and disposal of any and all supplies and services procured by the State of Georgia.

#### **2.2 State Purchasing Division Assistant Commissioner**

The SPDAC is the Commissioner's designee.

#### **2.3 Designated Procurement Officer**

1. The Commissioner may delegate authority to a designee or to any State Entity or official as permitted by the State Purchasing Act. Each State Entity is required to identify a qualified individual to serve as its official procurement officer. To be qualified to serve as the State Entity or college/university's procurement officer (APO/CUPO), the individual must meet the minimum requirements identified by SPD as well as any other additional requirement identified by the State Entity.

Information concerning the candidate must be submitted to SPDAC for approval utilizing SPD-OP001 Designation of Agency Procurement Officer Form. The APO/CUPO has the authority to procure goods and services within State Entity's Delegated Purchasing Authority (DPA). The responsibilities of the APO/CUPO include but are not limited to:

- a. Maintain all necessary State Entity procurement records.
  - b. Provide information to SPD regarding purchasing transactions as requested.
  - c. Provide methods to assure all purchasing laws, rules, regulations and procedures are observed within the State Entity.
  - d. Ensure that the ethics of public procurement are being maintained.
  - e. Manage the quality of the State Entity's solicitations through the use of the SPD-SP016 RFP Preparation Scorecard and other related quality tools provided by SPD.
2. The APO/CUPO must prioritize purchases of commodities, goods and services in the order listed in Chapter 3, Section 1.1, Policy, of the GPM.
  3. The APO/CUPO has the responsibility to prepare and submit to the SPD, State Entity requirements for all materials and services, which exceed the State Entity's DPA.

### ***Section 3: Exemptions from State Purchasing Requirements***

Listed below are the entities and specific categories of purchasing that are exempt from State Purchasing requirements:

1. Government Entities
  - a. All governmental authorities.
  - b. All legislative and judicial branches.
2. Government Entities with Partial Exemptions
  - a. Construction and/or Public Works Contracts for several public authorities, the Board of Regents and the Department of Transportation. This does not apply to purchasing construction or building materials.
  - b. Department of Education's purchase of school textbooks.
  - c. Space Management for real estate administration.
  - d. Department of Defense for purchase and issuance of military property.
  - e. Technical instruments and supplies and technical books and other printed matter on technical subjects; also, manuscripts, maps, books, pamphlets, and periodicals for the use of the State Library or any other library in the state supported by state funds; also services.
  - f. Livestock for slaughter and perishable articles, such as fresh vegetables, fresh meat, fish and oysters, butter, eggs, poultry and milk.

- g. Emergency supplies of drugs, chemicals and sundries, dental supplies and equipment.
- 3. Services and Other Exemptions
  - a. Services, which are limited to those services which are defined by a statute as a “profession” or “professional service”. For example, the following services are statutorily defined as “professions” or “professional services”: certified public accountancy, actuarial services, architecture, landscape architecture, interior design, licensed or accredited appraisers or licensed or accredited financial analysts providing opinions of value, chiropractic, dentistry, professional engineering, podiatry, pharmacy, veterinary medicine, registered professional nursing, harbor piloting, land surveying, law, psychology, medicine and surgery, optometry, and osteopathy.
  - b. Personal Employment Services: Only those services rendered by a person who works full-time or part-time for and under the control of the state and receives compensation as a salary in direct payment from a department, State Entity or institution of state government.
  - c. Department of Community Health for the purchase of health insurance for state employees and public school teachers under the State Health Benefit Plan.
  - d. Georgia Merit System for the purchase of flexible benefits for State of Georgia Employees.
  - e. Office of Treasury with respect to investments and investment related services.
  - f. Hatch and Smith Lever Act purchases - Agricultural purchases from land grant universities.
  - g. Contracts for services only to be provided by Non-Profit Entities that comply with the requirements of O.C.G.A. 50-20-1 et seq.
- 4. Exempt Goods/Services by NIGP™ Code
 

SPD has established a list of goods/services by NIGP™ Code which are exempt from the State Purchasing Act. This list is available on SPD’s web site at the following link:

[http://doas.ga.gov/StateLocal/SPD/Docs\\_SPD\\_General/NIGPExemptList.pdf](http://doas.ga.gov/StateLocal/SPD/Docs_SPD_General/NIGPExemptList.pdf)

SPD may update this list from time to time by posting a new version of the list.

## ***Section 4: Delegation of Authority to State Entities***

### **4.1 Delegated Purchasing Authority**

In accordance with O.C.G.A. Section 50-5-69, SPD may, at its discretion, delegate purchasing authority to State Entities to permit those State Entities to make purchases on

their own behalf. SPD shall define a State Entity's delegated purchasing authority (DPA) in writing, which may include both limitations and conditions. Examples of DPA limitations include, but are not limited to, restrictions regarding the dollar amount of the purchase, solicitation type, and the specific good or service to be procured. Examples of DPA conditions include, but are not limited to, completing SPD-prescribed training/certification and/or professional development classes and completing any action plans from audit reviews conducted by SPD. DPA may vary from State Entity to State Entity and may be increased, decreased or revoked at any time by SPD. Additional information regarding a State Entity's DPA is available on DOAS' website at the following link:

[http://doas.ga.gov/StateLocal/SPD/Docs\\_SPD\\_General/StateEntityDPALetter070109.doc](http://doas.ga.gov/StateLocal/SPD/Docs_SPD_General/StateEntityDPALetter070109.doc)

The APO/CUPO is responsible for ensuring the State Entity does not exceed its DPA. The State Entity must not split purchases/solicitations, structure short initial contract term periods, or take any other action with the intent to circumvent the limits of the State Entity's DPA. With respect to reoccurring purchases and/or multi-year agreements, SPD will utilize the estimated annualized cost to determine whether the purchases were within the State Entity's DPA. Any question with respect to whether a solicitation/purchase is within the State Entity's DPA should be directed to the SPDAC; however, the following examples are provided for the APO/CUPO's reference:

**Example 1:**

State Entity routinely solicits vendors to provide catering services for special events. Although a contract for a single event is less than the State Entity's current DPA of \$250,000, the State Entity's APO/CUPO anticipates that the total spend for catering services during the fiscal year will equal roughly \$300,000. In this scenario, because the annualized cost is more than the State Entity's DPA, the APO/CUPO should either request authority from SPD to conduct these purchases or request SPD conduct a solicitation to establish a contract for catering services.

**Example 2:** State Entity has delegated purchasing authority of \$250,000 to conduct RFPs. State Entity desires to issue an RFP to identify a provider for certain software services which will be provided over the course of approximately 18 months, divided into two contract terms of six months and 12 months. The estimated total value of the multi-year agreement is \$700,000 with approximately \$200,000 being spent in the first contract term and \$500,000 during the second contract term.

*Analysis and Answer:* A simple way to determine the annualized cost for a multi-year agreement is to (1) determine the monthly cost by dividing the total cost of the contract by the total number of months and (2) multiplying the monthly cost by 12. In Example #2, the monthly cost of this contract is approximately \$39,000 per month (\$700,000 divided by 18 months). The estimated annualized cost is therefore \$468,000 (\$39,000 multiplied by 12). Therefore, because the annualized cost of this multiyear agreement is in excess of the State Entity's DPA, the RFP must be conducted by SPD unless SPD grants authority for the State Entity to conduct the RFP.

## 4.2 Initial Request of Delegated Purchasing Authority

There are instances where a State Entity may request an initial grant of Delegated Purchasing Authority using the Request To Increase Delegated Purchasing Authority (DPA) form along with the State Entity Planning Document (ADP) form. The ADP includes information concerning distribution of authority within the State Entity, reporting requirements, training of purchasing staff, bid procedures, and other documentation relating to the State Entity's purchasing process.

Examples for an initial request for delegated purchasing authority would be the establishment of a new State Entity, or where an entity is administratively attached to a State Entity and has not received a delegation of authority in the past. The State Entity should attach any pertinent supporting documentation to its request. The SPD will review the State Entity's request and will consider the following factors:

- Experience and training of the APO/CUPO and procurement staff
  - Results of previous Purchasing Processing Reviews
  - History of purchase transactions
  - State Entity internal purchasing procedures
  - Minority participation and reporting
1. The SPD will review the State Entity Planning Document to determine the depth of the State Entity's internal purchasing policies, procedures, and reporting systems to accurately track, monitor, and report use of state allocated funds. The State Purchasing Division Assistant Commissioner or designee may grant the State Entity a trial delegated authority for a 3 to 6 month or longer period until such time as the SPD conducts a Purchasing Process Review to determine whether the State Entity has instituted sound internal purchasing policies and procedures.
  2. The SPDAC or designee will notify the State Entity in writing of the final action taken on the request for an increase in DPA after the Purchase Processing Review. Any abuse of the DPA by the State Entity could result in the DPA being removed.

## 4.3 Exceeding Delegated Purchasing Authority

On a case-by-case basis, the SPD may permit a State Entity to exceed its existing DPA. A State Entity must always request and receive written permission prior to exceeding its DPA. In the event the State Entity desires to conduct a competitive solicitation on its own to establish a contract which exceeds the State Entity's existing DPA, the State Entity may request approval from SPD by completing and submitting the following form: SPD-NI006 "One-Time Request to Exceed" (available online at <http://www.doas.georgia.gov/StateLocal/SPD/Seven/Pages/Home.aspx>). The State Entity must request and receive written permission to exceed its DPA prior to conducting the competitive solicitation. However, an exception may be granted when a State Entity issues a solicitation with the intent that the resulting contract would not exceed its DPA and later, after reviewing bids/proposals, determines the resulting contract *will* exceed the State Entity's DPA. In this situation, the State Entity must first request and receive

written approval from SPD by completing and submitting the form identified above before proceeding with the solicitation.

#### **4.4 Increasing Delegated Purchasing Authority**

A State Entity Planning Document must be submitted to the State Purchasing Division whenever a State Entity requests an increase in its delegated purchasing authority. The State Entity Planning Document includes information concerning distribution of authority within the State Entity, reporting requirements, training of purchasing staff, bid procedures, and other documentation relating to the State Entity's purchasing process.

1. The State Entity should submit a signed Request for Increasing Delegated Purchasing Authority form to the SPD, which includes a State Entity Planning Document. The State Entity should attach any pertinent supporting documentation to its request. The SPD will review the State Entity's request and will consider the following factors:
  - Experience and training of the APO/CUPO and procurement staff
  - Results of previous Purchasing Process Reviews
  - History of purchase transactions
  - State Entity internal purchasing procedures
  - Minority participation and reporting
2. The SPD will notify the State Entity in writing of the action taken on the request for an increase in DPA. Any abuse of the DPA by the State Entity could result in the DPA being removed.

#### **4.5 Delegate Purchasing Authority for a Request for Proposal (RFP)**

Prior to utilizing the Request for Proposals (RFP) process to establish a contract, SPD must certify in writing that the use of competitive sealed bidding (i.e. the RFQ process) will not be practicable or advantageous to the State. In the event SPD has granted DPA to a state entity to conduct an RFP, the APO/CUPO of that state entity shall be authorized to make such written certification justifying the use of the RFP process.

### ***Section 5: Mandatory Purchases***

#### **5.1 Statewide and State Entity Contracts**

State Entities must purchase goods, commodities and services from statewide contracts where the items needed are available on those contracts. State Entities must also purchase items that are available on State Entity Contracts for their particular State Entity. These contracts have met competitive solicitation requirements.

## 5.2 Statewide Purchases or State Entity Contracts

In every case where the State Entity identifies a need for a good, commodity or service and the solicitation must be handled by SPD, the State Entity must begin the process by the issuance of a requisition. This includes those cases whether the validated amount of the procurement is expected to exceed the State Entity's DPA. Requisitions submitted to SPD must contain adequate specifications/descriptions, validated budget, approval, and all other information pertinent to the procurement.

## 5.3 Statutory Mandatory Sources

State Entities are required by statute to purchase certain products and services from Georgia Correctional Industries (GCI) and Georgia Enterprises for Products and Services (GEPS) where the products being purchased have been certified in writing as further described below.

- a. Georgia Correctional Industries. In the case of GCI, the Commissioner of Corrections must certify the products for them to be mandatory.
- b. Georgia Enterprises for Products and Services. The State Use Law set forth at O.C.G.A. 50-5-135 et seq. is intended to create opportunities for disabled persons employed by community-based rehabilitation programs and training centers that are certified by the State Use Council. In order to effectuate the purposes of the State Use Law,
  - (i) DOAS and the State Use Council have agreed that, unless specifically identified as a "preferred source" by DOAS and the State Use Council, the goods and services identified on the procurement list attached as Exhibit A (the "Procurement List") to that March 25, 2009, Agreement are mandatory sources and that State Entities are required to purchase such items at the prices stated pursuant to O.C.G.A. Section 50-5-136(b)(2);
  - (ii) DOAS and the State Use Council further agree that State Entities may, but are not required to, purchase items designated as "preferred sources" at the prices stated in the Procurement List attached to the March 25, 2009, Agreement.

A copy of the current Procurement List showing both mandatory and preferred sources, which may be amended from time to time, can be found at the following web site:

[http://tst-srvcs-internet.doas.ga.gov/StateLocal/SPD/Docs\\_SPD\\_General/StateUseProcurementList.pdf](http://tst-srvcs-internet.doas.ga.gov/StateLocal/SPD/Docs_SPD_General/StateUseProcurementList.pdf)



## **Section 6: Emergency Purchases**

State Purchasing has granted the authority to State Entities, departments and institutions to purchase urgently needed items arising from unforeseen causes. An emergency procurement is handled outside of the normal competitive process because of the urgency of the circumstances. Therefore, SPD approval is not required in advance of the emergency purchase. It is always good business practice and considered to be in the best interest of the state to make any procurement as competitive as time permits. The APO/CUPO must provide the SPD with written justification and a copy of the PO and all pertinent documentation relating to the purchase transaction.

## **Section 7: Procurement Training and Education**

### **7.1 Assessment of State Entity Training Needs**

Training in procurement is important for procurement personnel and vital for new employees without prior experience in procurement. The SPD will coordinate with the APO/CUPO to assess the training needs of State Entity procurement personnel, and will make procurement training available to assist in the development of highly skilled State Entity procurement staff. The APO/CUPO should submit recommendations to the SPD on procurement topics.

### **7.2 Training Topics**

The SPD will provide procurement training to APO/CUPOs and other procurement staff. The training includes an overview of the procurement process for State Entities and includes topics such as the fundamentals of public purchasing, role and responsibilities of the APO/CUPO, delegated purchasing authority, competition, specifications, procurement types, bid procedures, evaluation and award, the Open Records Act, the Georgia Procurement Registry and how to use the Georgia Procurement Manual.

### **7.3 Professional Associations**

The SPD encourages APO/CUPOs to join and participate in professional organizations. Periodically, State Purchasing will coordinate with professional purchasing organizations such as the National Institute of Governmental Purchasing (NIGP), and the National Contract Management Association (NCMA) to sponsor specialized classes.

## Chapter 3: Source Selection and Contract Formation

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### Section 1: Procurement Process

#### 1.1 Fundamental Administrative Rules

All purchases made by a State Entity should be based on competitive bidding whenever possible. Purchases less than \$5,000 may be made without competitive bidding. The State Entity may not split reasonably foreseeable purchases into two or more transactions for the purpose of circumventing the requirement that any purchase of \$5,000 or more be based on competitive bidding. For purposes of determining compliance with this rule, the purchases of the State Entity as a whole will be aggregated where reoccurring purchases are reasonably foreseeable. Therefore, each State Entity is responsible for monitoring its purchases to ensure the State Entity is not violating the rule by making multiple purchases of the same item/service which are reasonably foreseeable and total \$5,000 or more in any given fiscal year. For example, if a State Entity makes semi-monthly purchases of Item X for \$1,000 each, then the State Entity must seek competitive bids for Item X because it is reasonably foreseeable that the annualized cost for the fiscal year will be more than \$5,000. If a State Entity purchases Item Y for \$4,000 in August and again for \$4,000 in February, then the February purchase does not necessarily have to be competed if it was not reasonably foreseeable there would be a subsequent purchase. The key is the reasonable foreseeability that total purchases in a fiscal year for the same goods/services will exceed \$5,000. Purchases from the same vendor(s) will draw scrutiny.

Agencies must follow the Order of Precedence that has been set by the SPD when purchasing commodities or services. Small and minority business shall be given a fair and equal opportunity to participate in the state's purchasing process. The agency may purchase commodities and services within the State Entity's Delegate Purchasing Authority and in accordance with the rules identified in the GPM. APO/CUPO must review GPM rules and determine whether additional procedures need to be identified based on the State Entity's unique situation provided such procedures meet or exceed the minimum standards established by the GPM. In the event the APO/CUPO determines additional procedures must be identified, such procedures will be made in writing and be communicated to other purchasing staff within that State Entity.

#### 1.2 Procedure

1. Whenever a State Entity identifies the need for a good, commodity or service, the process should begin with the development of specifications by the user, for example an engineer or other procurement official. The end user submits a written request for the commodity or service to the APO/CUPO along with specifications. The APO/CUPO should determine whether the commodity or service can be procured from a statewide or State Entity contract, or other

mandatory sources. The APO/CUPO must follow the Order of Precedence discussed below in making this determination.

2. If the dollar amount of the purchase is less than \$5,000.00 the APO/CUPO will be able to purchase the item or service without competition. If the dollar amount is more than \$5,000.00, the APO/CUPO must use competitive bidding procedures. The APO/CUPO must next determine whether the item or service to be purchased is within the State Entity's DPA. If the dollar amount of the purchase is within the State Entity's DPA, the APO/CUPO can process the solicitation. If the dollar amount of the purchase exceeds the State Entity's DPA the solicitation must be processed by the SPD. In this case, the State Entity must submit a requisition along with other pertinent documentation, including specifications, to the SPD.
3. The SPD will review the requisition and other documentation submitted by the State Entity for completeness. The SPD will review specifications to ensure that they are not too restrictive so as to preclude competition. The SPD Buyer will coordinate with the State Entity throughout the solicitation process until a contract has been awarded.
4. The State Entity must determine responsiveness and responsibility of Bidders and Offerors before a contract can be awarded to a vendor. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility.
5. Examples of non-responsible bidders/offerors include but are not limited to a bidder's/offeror's history of nonperformance or performance problems on other contracts (public or private), a record of financial difficulty, business instability, criminal sanctions, civil sanctions, and/or tax delinquency. Non-responsibility will be determined by the SPD or APO/CUPO on a case-by-case basis taking into consideration the unique circumstances of the individual procurement. A non-responsibility determination of a vendor must be put in writing.
6. Before contract award, the APO/CUPO shall review the SPD Suspension and Debarment listing. The list provides an up-to-date source of information on those firms and individuals that have been suspended or debarred from doing business with the State of Georgia. A contract cannot be awarded to a vendor/contractor who has been suspended or debarred from doing business with the government.
7. The SPD issues Notices of Award. The State Entity issues purchase orders to vendors. A purchase order is a contract between the State Entity and the vendor. The SPD requires that all purchase orders contain an authorized signature, correct payment and delivery terms and the appropriate "purchase type" codes and commodity codes.

## **Section 2: Order of Precedence**

### **2.1 Policy**

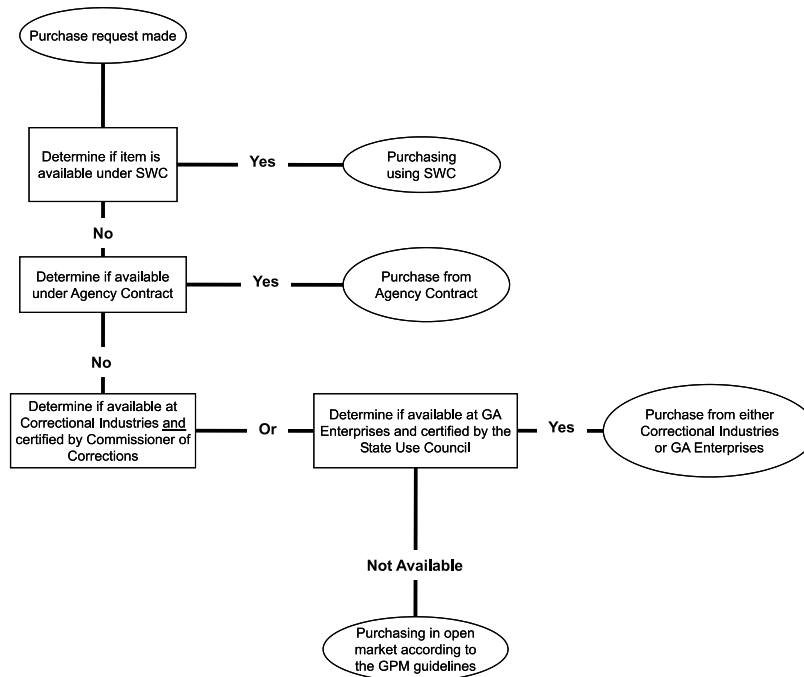
When purchasing a product or service, the APO/CUPO should adhere to the following order of precedence:

1. Mandatory Statewide Contracts
2. State Entity Contracts (i.e. an existing contract between the State Entity/college/university and a supplier)
3. Georgia Correctional Industries (GCI) or Georgia Enterprises for Products and Services (GEPS) for products designated as mandatory (not applicable to preferred products)
4. Convenience Statewide Contracts, “preferred products” available through GEPS, or Open Market Purchases

Note: Notwithstanding the fact that the needed products or services may be fulfilled by an existing statewide contract, the APO/CUPO may, if desired, procure the needed products and services through an intergovernmental agreement with GCI, Georgia Industries for the Blind, or any other governmental entity. Intergovernmental agreements do not require approval from SPD or competitive bidding and are not subject to dollar limits.

## 2.2 Procedure

The following flowchart shows the process for making mandatory source purchasing decisions.



## Section 3: Methods of Procurement

### 3.1 Request for Quotation (RFQ)

A Request for Quotation (RFQ) is a formal solicitation method that includes a well-defined specification or scope of work and contains all contractual terms and conditions. The RFQ solicits sealed price quotations or bids from prospective vendors and seeks to obtain price quotes from qualified vendors using the lowest quote as the determining factor for awarding the contract.

The State Entity should use an RFQ if the project lends itself to the creation of a clear and accurate Statement of Work and the objective of the solicitation is to identify a vendor who can provide the required specifications at the lowest possible cost.

### 3.2 Request for Proposal (RFP)

A Request for Proposal (RFP) is a formal solicitation method that seeks to leverage the creativity and knowledge of business organizations in order to provide a solution to a unique procurement. The RFP solicits sealed price proposals from prospective vendors and seeks to obtain the “best value” for the State. The RFP method does not use the cost of the project as the single determining factor, but rather uses a combination of lowest cost plus best proposed solution to determine the award.

The State Entity should use an RFP if the project does not lend itself to the creation of a clear and accurate Statement of Work (SOW) and the objective of the solicitation is to identify a vendor who can offer the best possible solution to the procurement at the most reasonable cost. See Chapter 2, Section 4: Delegation of Authority to State Entities, and Chapter 3, Section 5.7: Competitive Sealed Proposals for conditions and authorization to conduct an RFP.

### **3.3 Request for Information (RFI)**

A Request for Information (RFI) is a quasi-formal method for soliciting information from vendors who have knowledge or information about an industry, product, or service. The RFI method is not intended to result in a contract award but is designed to allow for the collection of industry information that will then be used to determine if an RFQ or RFP solicitation method is appropriate.

The State Entity should use an RFI if there is not enough information or knowledge about the product or service needed to develop a Statement of Work for an RFQ or RFP.

### **3.4 Request for Qualified Contractor (RFQC)**

An RFQC is used in cases where the state is attempting to find vendors with the qualifications to produce the product or service desired. The required qualifications are known and each vendor is judged on its ability to meet or surpass the required qualifications. This form of solicitation may, but does not always, culminate in a contract award.

## **Section 4: Noncompetitive Procurement**

### **4.1 Policy**

If the APO/CUPO determines that the needed items can reasonably be purchased for less than \$5,000.00, the purchase may be made without competitive bidding.

### **4.2 Procedure**

The following procurement procedure shall be used for orders which are for less than \$5,000.00.

The user determines and transmits to the APO/CUPO the requirements including specifications, delivery, and quantity.

The APO/CUPO should first determine that the items are not available from a mandatory source.

Although competition is not required for purchases under \$5,000.00, State Purchasing recommends the comparison of products and prices from at least three (3) vendors prior to ordering.

The State Entity can purchase the item from the selected vendor through the State Purchasing Card (P-card) or a purchase order.

## **Section 5: Competitive Procurement**

### **5.1 Policy**

If the APO/CUPO determines that the needed items are not available through a mandatory source, such as a statewide or State Entity contract, and the items are not available through a statutory mandatory source, such as Georgia Correctional Industries or Georgia Enterprises, the APO/CUPO must purchase the item through the use of competitive bidding procedures unless the items can be purchased for less than \$5000.00. The State Entity has the discretion to enter into an inter-governmental agreement if the items to be acquired are available from that source; in this case, competitive bidding procedures do not apply.

### **5.2 Procedure**

1. In every case where the State Entity identifies a need for a good, commodity or service and the solicitation is handled by the SPD, the State Entity must begin the process by the issuance of a requisition. This includes those cases where the validated amount of the procurement is expected to exceed the State Entity's Delegated Purchasing Authority as well as cases where the solicitation is valued at an amount in excess of \$100,000.
2. Requisitions submitted to the SPD must contain adequate specifications, validated budget, approval, and all other information pertinent to the procurement. If the solicitation is for a Request for Proposal, the State Entity may submit the requisition along with a brief description of the item or service to be purchased. The State Entity may submit other documentation to the SPD at a later time in accordance with the SPD RFP process discussed in the GPM.

### **5.3 Minimum Publication Policy**

It is the policy of the State to give every vendor an equal opportunity to submit bids/offers on State procurements. Therefore, all solicitations must be publicly advertised on the Georgia Procurement Registry. Please note that Team Georgia Marketplace and eQuote both provide public notice on the Georgia Procurement Registry. The State Entity may, if desired, provide additional public notice of solicitations, such as placing an advertisement in a newspaper of statewide circulation or providing additional notice on the State Entity's website.

### **5.4 Team Georgia Marketplace**

Team Georgia Marketplace™ is provided by DOAS and its partners and serves as an online tool to support various state purchasing functions, including registration of bidders and suppliers, advertisement of contract opportunities, electronic bidding, and contracts management. DOAS intends Team Georgia Marketplace™ to be the

primary vehicle for all solicitations conducted by DOAS as well as all state entities that are capable of becoming participating state entities. DOAS will work with all participating state entities to develop the knowledge and skills necessary to successfully utilize Team Georgia Marketplace™ and establish a date for each participating state entity to begin conducting all solicitations in Team Georgia Marketplace™ unless the SPDAC grants a written exception.

## 5.5 e-Quote

eQuote is a software technology permitting simple Request for Quotes to be conducted online. Vendors responding to electronic Request for Quotes (“eRFQs”) hosted by eQuote are permitted to logon, enter a response per line item, enter a response of “no bid” per line item, and attach/upload documents to the bid response until bid closing. eQuote simplifies the bidding process by enabling electronic responses, reducing paper documents received, and automating the cost evaluation process.

1. **eQuote Scope.** eQuote is mandatory for all Request for Quotes (excluding any Request for Quotes conducted through the Team Georgia Marketplace™ ) unless the SPDAC grants an exception. eQuote may not be used for the following:
  - a. purchases to be conducted through Request for Proposals
  - b. purchases for construction projects
  - c. sole source procurements
  - d. purchases in excess of a State Entity’s DPA unless prior approval has been granted by SPD (please utilize the following online form: SPD-OP002 “One-Time Request to Exceed Delegated Purchasing Authority”)
2. **eRFQ Advertisement Policy.** The following notification and advertisement policies are applicable to eRFQs hosted by eQuote:
  - a. Vendors Notified. eQuote interacts with the vendor registration system provided through Team Georgia Marketplace™, enabling the State Entity to take advantage of the automated email notification process for vendors maintaining active registrations. DOAS has the capability to offer automatic email notifications of new procurement opportunities to vendors electing to register in the Team Georgia Marketplace™. Registering vendors are allowed to select one or more NIGP codes which best reflect the types of goods and/or services the vendors offer. The NIGP codes selected by the registering vendor operate as a filter, limiting the automatic email notifications sent to the vendor to procurement opportunities which contain one or more of the vendor’s selected NIGP codes. The State Entity must comply with the following vendor notification policy:

**eQuote Vendor Notification Policy Chart**

Estimated Solicitation Value	# of Registered Vendors Selected
Less than \$5,000	No competitive bidding required



Less than \$249,999.99	At a minimum, select the option within eQuote which randomly selects at least 20 Vendors (of which at least 10 must be minority firms if available) with current registrations for the NIGP codes identified for the specific eRFQ
\$250,000 or more	Select Option within eQuote which selects all Vendors with current registrations for the NIGP codes identified for the specific eRFQ

- b. Vendor Request for Notification. Vendors (1) who do not maintain active registrations within the Team Georgia Marketplace™ or (2) who are not randomly selected by the Vendor Registration System (in the event the State Entity only elects to notify the minimum number of vendors as permitted above) may request to be added as a participant in the eRFQ by requesting access from the buyer identified as the point of contact for the eRFQ.
- c. Public Advertisement. All solicitations posted in the eQuote are publicly advertised online and may be viewed by accessing the Georgia Procurement Registry ([http://ssl.doas.state.ga.us/PRSapp/GPR\\_P\\_start.jsp](http://ssl.doas.state.ga.us/PRSapp/GPR_P_start.jsp)) and then selecting “eQuote Public Site”.
- d. Posting Period. The eRFQ posting period must be calculated in accordance with the following recommendations and/or mandatory requirements as identified below:

**Bid Posting Policy Chart**

<b>Estimated Solicitation Value</b>	<b>Minimum Posting Period</b>	<b>Recommended Posting Period</b>
Up to \$9,999.99	Minimum of Three (3) Business Days	Minimum of Three (3) Business Days
\$10,000 - \$49,999.99	Minimum of Seven (7) Calendar Days	Minimum of Ten (10) Calendar Days
\$50,000 - \$99,999.99	Minimum of Eight (8) Calendar Days	Minimum of Fifteen (15) Calendar Days
\$100,000 - \$249,999.99	Minimum of Ten (10) Calendar Days	Minimum of Twenty (20) Calendar Days
\$250,000 or more	Minimum of Fifteen (15) Calendar Days ( <u>mandated by Georgia law</u> )	Minimum of Thirty (30) Calendar Days

In the event the State Entity determines it is appropriate to observe the minimum posting period rather than the recommended posting period, the State Entity must document the justification for utilizing the minimum posting period and include such justification with the procurement file. Although the

posting periods have been defined utilizing the estimated value of the solicitation, the estimated value is only one factor in determining an appropriate posting period. In selecting the appropriate posting period, the State Entity must consider the complexity of the solicitation and an appropriate period of time for a vendor to review the solicitation, ask questions, and prepare a sufficient response. If a Pre-Bid Conference is conducted, it must be held not less than five (5) business days before the eRFQ closing date.

In the event the State Entity desires to post a solicitation for less than the minimum posting period, the State Entity must first submit a written request with detailed justification for such shorter posting period and receive written approval from SPD prior to proceeding with the shorter posting period. SPD will not approve any requested posting period which does not conform to the State Purchasing Act (O.C.G.A. Section 50-5-67). The written approval and justification for a posting period of shorter duration than the minimum posting period must be maintained as part of the procurement file.

### **3. Public Opening**

- a. Reserved.
- b. Reserved.

### **4. eQuote Awards**

- a. Selecting Apparent Successful Vendor(s). After bids are evaluated, the State Entity will select the lowest, responsive and responsible vendor(s) in accordance with stated award criteria. Whether a vendor may be considered “responsive” and “responsible” will be determined by the State Entity on a case-by-case basis after considering any specific issues and their relevance to the procurement in question. The following general definitions are relevant:
  - i. “Responsive” means the vendor, whether a company or an individual, has submitted a timely offer which materially conforms to the requirements and specifications of the solicitation.
  - ii. “Responsible” means the vendor, whether a company or an individual, has appropriate legal authority to do business in the State of Georgia, a satisfactory record of integrity, appropriate financial, organizational and operational capacity and controls, and acceptable performance on previous governmental and/or private contracts, if any. Examples of non-responsible vendors include, but are not limited to, a bidder’s history of nonperformance or performance problems on other contracts (public or private), a record of financial difficulty, business instability, criminal sanctions, civil sanctions, and/or tax delinquency. As noted in Chapter 3, Section 1.2 of the GPM, non-responsibility will be determined by the State on a case-by-case basis taking into consideration the unique circumstances of the individual procurement. A non-responsibility determination of a vendor must be put in writing.

The standard eQuote instructions permit award to a single vendor or split awards to one or more vendors based on line items and/or subcategories of products and/or services.

- b. **Public Notice Requirements.** eQuote enables automatic emails to be sent to the lowest, responsive and responsible bidder(s) meeting all specifications, notifying the bidder(s) of award selection. In addition, eQuote automatically emails notice to all other participating bidders, notifying the bidders that their bids were not selected for award. In addition, the State Entity must comply with the following table regarding public notice of the bid results:

<b>Notice of Award Policy</b>		
<b>Estimated Solicitation Value</b>	<b>First Post NOIA?</b>	<b>Post NOA?</b>
Less than \$50,000	No	Yes 1. send via email to all participants <u>AND</u> 2. post to GPR listing
\$50,000 - \$99,999.99	No	Yes 1. send via email to all participants <u>AND</u> 2. post to GPR listing
\$100,000 or more	Yes 1. send via email to all participants <u>AND</u> 2. post to GPR listing	Yes* 1. send via email to all participants <u>AND</u> 2. post to GPR listing  *Unless otherwise authorized in writing by the SPDAC or DOAS Commissioner, the NOA should be posted (1) no earlier than 10 calendar days following the posting of the NOIA and (2) in the event a protest is received, only after the protest has been resolved.

5. **Re-Award.** In the event an award must be changed, eQuote permits the State Entity to “re-award” one or more line items to another vendor as necessary. For example, if the winning vendor is disqualified as a result of a sustained protest, the State Entity would have the option of awarding to the lowest, responsive and responsible vendor of the remaining vendors.

6. **Forms of Payment.** A Purchase Order (PO) may be utilized as a form of establishing a contract with the awarded vendor. It is mandatory that the Purchase Order reflect the eRFQ number in the PO reference field.
7. **No fax or written bids permitted.** Fax or written bids cannot be used in conjunction with eQuote. Participating vendors must submit their responses electronically within the eQuote system.
8. **Record Retention.** As with all procurement transactions, the State Entity must properly document the eQuote process by retaining all documents relating to the eRFQ and the resulting award (if any).

## 5.6 Formal Sealed Bids

### 1. Conditions for use

The Request for Quotes (“RFQ”) process is a competitive procurement method used by State Entities to solicit bids for the supply of goods and/or services. In the RFQ process, the State Entity prescribes both the specifications and solution to its own needs. The RFQ process identifies the lowest priced responsive and responsible bidder(s) for contract award; provided, however, no contract award shall be made to the bidder with the lowest cost if the State Entity determines the low cost bidder cannot clearly perform the contract requirements. Purchases involving expenditures of \$5,000.00 or more will be made by solicitation of sealed competitive bids. To solicit competitive sealed bids, the State Entity must either (1) require the vendor to submit its bid in a sealed package or (2) utilize eQuote, Team Georgia Marketplace™, or any other procurement tool approved by SPD which facilitates the receipt of sealed bids. Faxed bids and emailed bids will not be considered sealed bids. Purchases involving expenditures of \$100,000.00 or more will be made by solicitation of sealed competitive bids/proposals. Sealed bids shall not be opened until after the closing date and time of the RFQ.

### 2. Request for Quotes

- a. Requisitions are used to initiate competitive sealed bid procurement. The RFQ shall include the following:
  - Instructions and information to bidders concerning the bid submission requirements
  - Time and date set for bid closing
  - Address of the office in which bids are to be received
  - Period that the bid shall remain open
  - Purchase description
  - NIGP commodity code
  - Specifications
  - Evaluation criteria

- Delivery or performance schedule
  - Inspection and acceptance requirements
  - Contract terms and conditions, including warranty and bonding or other security requirements, as applicable.
- b. If the RFQ incorporates documents by reference, the RFQ shall specify where such documents may be obtained. The RFQ shall require the acknowledgment by the bidder of the receipt of any addenda issued.
  - c. The RFQ may require the submission of bid samples, descriptive literature, and technical data and may require inspection or testing of a product before award.
  - d. The RFQ shall contain a certificate of non-collusion, which must be signed by an authorized representative of the bidder. Such person shall include his or her title and, if requested, shall supply verification of authority to bind the company in contract. Georgia law requires this certificate and failure to sign and submit it with the bid may result in its rejection.

The certificate of non-collusion states:

“I certify that this bid (proposal) is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a bid (proposal) for the same materials, supplies, or equipment, and is in all respects fair and without collusion or fraud. I understand that collusive bidding is a violation of State and Federal law and can result in fines, prison sentences, and civil damage awards. I agree to abide by all conditions of this bid (proposal), and certify that I am authorized to sign this bid (proposal) for the bidder (offeror).” [O.C.G.A. 50-5-67]. “I further certify that the provisions of the O.C.G.A. 45-10-20 et seq. have not and will not be violated in any respect.”

3. Public Notice
  - a. All RFQs that are required to be published to eQuote shall be publicly advertised in accordance with Section 5.5 “eQuote” of this chapter. All other RFQs shall be posted to the GPR.
  - b. The State Entity, at its discretion, may elect to conduct additional public advertisement of the RFQ through a newspaper or other publication with statewide circulation.
  - c. The following guidelines shall be followed by State Entities when posting competitive solicitations to the GPR:

Competitive Solicitations Guidelines	
Sole Source solicitations valued \$5,000.00 and over	Minimum of five (5) business days

<b>Competitive Solicitations Guidelines</b>	
Solicitations valued up to \$49,999.99	Minimum of ten (10) calendar days
Solicitations valued from \$50,000.00 to \$99,999.99	Minimum of fifteen (15) calendar days
Solicitations from \$100,000.00 to \$249,999.99	Minimum of twenty (20) calendar days
Any solicitation valued at \$250,000.00 and above and all Construction bids	Minimum of thirty (30) calendar days

With the exception of construction bids, the SPDAC reserves the right to approve the posting of a competitive solicitation for a period of time less than the guidelines stated above when sufficient evidence justifying the reduced posting time period has been established. The requested reduced posting time period must comply with the requirements of the State Purchasing Act.

#### 4. Pre-Bid Conference

- a. A Pre-Bid Conference is a meeting held with perspective bidders prior to the “Bid Closing Date/Time” to clarify any ambiguities, answer questions and ensures that all bidders have a common understanding regarding the supplies or services required. The APO/CUPO can conduct a pre-bid conference within a reasonable time, but not less than seven (7) business days before the “Bid Closing Date/Time” to explain the procurement requirements.
  - Transcripts of such conferences may be taken and can be provided to all vendors who request a copy. Statements made at the pre-bid conference shall not be considered addenda to the RFQ unless a written addendum is issued pursuant to the conference.

#### 5. Bid Closing and Submittals

- a. Modifications or Withdrawal of Bids Prior to Bid Closing
  - 1) A bidder may modify or withdraw a bid at any time before bid closing. The modification or withdrawal must be in writing and must be received before the time and date set for the bid closing. The bidder or an authorized representative may modify or withdraw the bid in person before the time and date set for bid closing.
  - 2) All documents concerning a modification or withdrawal of a bid shall be retained in the appropriate procurement file.
- b. Late Bids, Late Withdrawals, and Late Modifications
  - 1) A bid, modification or withdrawal is late if it is received after the time and date set for bid closing. Any bids received after the bid closing time and date will be rejected and stamped as a “late bid” clearly marked on the face of the envelope.

- 2) Documentation concerning a late bid, late modification, or late withdrawal shall be retained in the appropriate procurement file.
- c. Receipt, Closing and Recording of Bids
- 1) Bids and modifications (if any) shall be time and date stamped upon receipt and stored unopened in a secure place until the time and date set for bid closing. No unauthorized person(s) shall have access to the bid file. In the instances of sealed bids, bids shall remain unopened until the time and date set for bid closing.
  - 2) An envelope that is not marked as a bid or does not identify the bidder or solicitation may be opened solely for the purpose of identification. In instances of sealed bids, a record shall be made on the envelope stating the reason for opening the bid. The record must also include the date and time the bid was opened, the solicitation to which the bid responded and the signature of the person who opened the envelope. The envelope shall be resealed and retained in the procurement file.
  - 3) All sealed bids received shall be opened and recorded by authorized personnel no earlier than the time and date designated in the RFQ.
- d. Mistakes in Bids and Awards
- 1) A bidder may correct mistakes discovered before the time and date set for bid closing by withdrawing and/or correcting the bid.
  - 2) Generally, withdrawal will only be allowed in cases where there has been an honest mistake not resulting from negligence and the mistake is clearly ascertainable.
  - 3) After bid closing, the SPD Buyer or the APO/CUPO may either waive minor informalities in a bid or allow the bidder to correct them if correction is advantageous to the state.
  - 4) No erasure may be made on bids or proposals. Prior to the “Bid Closing Date/Time”, errors may be stricken and corrections entered provided that any such strike-over or addition is initialed by the person signing the bid/proposal or their agent. Negligence on the part of the bidder or offeror confers no right to correct such bids/proposals after their opening or due date.
  - 5) After bid closing the SPD may, in its sole discretion, permit withdrawal when the best interest of the State would be served. Generally, withdrawal will only be allowed in cases where there has been an honest mistake not resulting from negligence and the mistake is clearly ascertainable. All decisions to permit correction or withdrawal of bids or to cancel awards or contracts based on bid mistakes shall be supported by a written determination made by the SPDAC or APO/CUPO.

## 6. Bid Evaluation and Award

### a. Evaluation of Bids

The contract shall be awarded to the lowest, responsive and responsible bidder whose bid meets the requirements and specifications, and contract terms contained in the RFQ. Unless otherwise provided for in the RFQ, award may be made by individual line item, by groups of line items, or for the aggregate total of all line items. Ordinarily, split awards will not be made unless the savings to the State exceeds five percent (5%) of the total contract price or \$500.00, whichever is greater. However, the APO/CUPO reserves the right to split awards if those thresholds are not met.

### b. If awarded by the SPD, a written Notice of Intent to Award and Notice of Award shall be sent to the successful bidder, followed by a purchase order from the APO/CUPO.

### c. Acceptability Requirements

A product acceptability evaluation may be conducted to determine whether a bidder's product is acceptable as set forth in the RFQ. The evaluation shall not be used to determine whether one bidder's product is superior to another bidder's product. Any bidder's offering that does not meet the acceptability requirements shall be rejected as non-responsive.

### d. Rejected Bids

The State of Georgia reserves the right to reject any and all bids/proposals submitted in response to any solicitation document, to reject any portion thereof, or to waive any minor irregularity or administrative requirement.

Reject Reasons	Definitions
<b>Not Low Bid (for RFQ only)</b>	Vendor's bid is not ranked lowest price when compared to other "responsible" bidders submitting "responsive" bids for this RFX.
<b>Not Highest Scoring Proposal (for RFP only)</b>	Vendor is "responsible" and has submitted a "responsive" proposal; however, another responsible vendor has submitted a responsive proposal which received a higher combined technical and cost score.
<b>Non-Responsible</b>	Vendor, whether a company or individual, cannot be considered responsible for one or more reasons (GPM provides examples).



<b>Reject Reasons</b>	<b>Definitions</b>
<b>Non-Responsive</b>	The Vendor has submitted a late offer or the Vendor's offer does not materially conform to the requirements and specifications of the RFX.
<b>Failed Contract Negotiations</b>	State Entity and Vendor could not reach agreement as to contract terms.
<b>Vendor Withdrawal</b>	Vendor submitted an offer but has elected to withdraw its offer from consideration.
<b>No Bid</b>	Vendor has not submitted an offer.

e. Evaluation and Clarification of Bids or Proposals

When evaluating any bid or proposal, the State may seek clarification from any bidder or offeror.

If after evaluation and obtaining clarification of a bid or proposal the State determines that a bid or proposal is unreasonable or unacceptable, or is noncompetitive, or the low bid or highest scoring proposal exceeds available funds, the SPD will determine in writing whether time or other circumstances will permit the delay required to re-solicit competitive bids or proposals. If the SPD determines that the circumstances are such that the procurement cannot be delayed, a contract may be negotiated provided that each responsible bidder or offeror who submitted a bid or proposal under the original solicitation is notified of the determination and is given a reasonable opportunity to negotiate.

In cases where the bid/proposals received are noncompetitive or the low bid or highest scoring proposal exceeds available funds, the negotiated prices shall be lower than the lowest rejected bid/proposal of any responsible bidder/offeror under the original solicitation.

f. Integrity of the Process

If at any time it is found that the integrity of the process has been compromised or that errors have occurred, the solicitation may be canceled. The procurement may be re-solicited if the State so desires.

g. Alternate Bids

Alternate bids will be considered for an award, if the product meets specifications and all of the requirements of the solicitation.

h. Single Bid

If only one responsive and responsible bid is received in response to a request for quote, an award may be made to the single bidder if the SPD buyer or

APO/CUPO determines in writing that the price submitted is fair and reasonable.

i. Cash Discounts

The phrase “cash discounts” refers to a discount off of the invoice price for early payment. The overall policy concerning any type of discount in bidding is one of preference and encouragement of a net bid price, FOB destination prepaid and added. All forms of deduction, discounting, or special pricing should be reduced to a simple net bid price for each item.

As a general rule, cash discounts offered from one (1) percent up to five (5) percent, for payment made in thirty (30) days, will be considered for the purpose of bid evaluation. However, a State Entity buyer may consider a cash discount offered by the vendor outside of the general rule noted above for the purpose of bid evaluation if the solicitation document so provides. To effectively exercise this discretion and determine whether cash discounts outside of the general rule should be evaluated, the State Entity buyer must assess the likelihood of the State Entity making payment within the provided time period and the ability of the State Entity to monitor and ensure the vendor’s compliance with the provided cash discount. **ANY DEVIATION FROM THE GENERAL RULE REGARDING CASH DISCOUNT EVALUATION MUST BE CLEARLY STATED IN THE SOLICITATION.**

All discounts offered will be taken if earned. In the event that the State is entitled to a cash discount, the period of computation will commence on the date of delivery, or receipt of a correctly completed invoice indicating the discount, whichever occurs later.

If the State is entitled to a discount under the contract, but the invoice does not reflect the existence of a cash discount, and the State pays the invoice, it shall be entitled, upon demand, to a credit in the amount of such discount.

Payment of invoices owed by the State shall be made whenever possible within thirty (30) days of the receipt of a correct invoice or goods, whichever is later, unless otherwise provided for in the solicitation document or resulting contract.

All bid considerations and justifications should be detailed on the bid tabulation to document determination of award.

j. Georgia Enterprises for Products and Services (GEPS)

The State Use Law set forth at O.C.G.A. 50-5-135 et seq. is intended to create opportunities for disabled persons employed by community-based rehabilitation programs and training centers that are certified by the State Use Council. Based on these statutes, any bid received from GEPS will receive a 5% to 8% price preference for purposes of cost evaluation as determined by DOAS.

k. Reciprocal Preference Law

The law requires that bidders/offerors resident in the State of Georgia be granted the same preference over bidders and offerors resident in another State in the same manner, on the same basis, and to the same extent that preference is granted in awarding bids or proposals for the same goods and services by such other State to bidders and offerors resident therein over vendors resident in the State of Georgia. This reciprocal preference is used for evaluation purposes only.

#### l. Resolving Tie Bids

A tie bid exists when two (2) or more bidders offer, at identical prices, products that meet all specifications, terms, and conditions. In such a situation, State statutes provide three (3) preferences which shall be used to resolve tie bids whenever applicable: (1) preference for products manufactured or produced within the State of Georgia; (2) preference for products sold by local bidders/offerors within the State; and (3) preference for products manufactured or sold by small business. If these statutes are insufficient to resolve the tie, consider the following in the order listed:

- Past performance of the bidders
- Earliest delivery date
- Division of the order
- Closest proximity to delivery site
- Flip of a coin

#### m. Coding Requirements

- 1) Commodity Codes are used to identify the source of commodities and/or services being purchased must be coded with the applicable NIGP Code regardless of the dollar amount. Every line item purchased will be coded. If the line item is \$500 or more the applicable NIGP commodity code must be used. State Entities may use the “99999” code for line items under \$500. If the State Entity is currently using the NIGP commodity code for purchases under \$500 they may continue to do so. Statewide, State Entity contracts must include the NIGP commodity code already assigned regardless of the dollar amount.
- 2) Purchase type codes must be identified on each purchase order issued by the State Entity as follows:

Manual Codes	PeopleSoft Codes
AC	State Entity Contract and Releases
CSN	Construction; PW; A&E
EXM	Exemption per OCGA 50-5-58
IGA	Intergovernmental Agreement, such as a purchase from GIB
MAN	Mandatory—GCI or GEPS

Manual Codes	PeopleSoft Codes
MUL	Multiple PO Type, which may be used for the following combinations of purchases on a single PO to a single vendor: <ul style="list-style-type: none"> <li>OMP less than \$5,000 and SWC</li> <li>OMP less than \$5,000 and AC</li> <li>OMP less than \$5,000 and MAN</li> </ul>
OMP	Open Market Purchase
SB	Sole Brand – per GPM
SS	Sole Source – per GPM
SWC	Statewide Contract and Releases

Use of the “MUL” Code is intended to introduce work efficiencies by allowing a single purchase order to be issued to a vendor for a combination of purchases as identified in the table above. The “MUL” code is available to all State Entities utilizing SAO’s PeopleSoft. Use of the “MUL” Code does not alter the State Entity’s responsibility to comply with the order of precedence defined in Section 2 of this Chapter or the requirement to follow the competitive solicitation process for any purchase of \$5,000 or more.

## 5.7 Competitive Sealed Proposals

### 1. Defining Request for Proposals Process

The RFP process is a solicitation which describes in general terms the problems and needs of the State. The RFP should be used when the needed good/services does not lend itself to the creation of a clear and accurate statement of work and the objective of the solicitation is to identify the vendor who can offer the best possible solution at the most reasonable cost. Unlike the RFQ process in which the State prescribes both the specifications and solution to its own needs and vendors replicate the State’s specifications and solutions in the bids the vendors submit, the RFP process contemplates the vendors will propose their own comprehensive and innovative solutions to the State’s needs described in the RFP. The RFP seeks to identify the “best value” for the State by using a combination of technical and cost factors to evaluate vendors’ proposals.

### 2. Following the Procurement Stages

The procurement process may be organized in several stages, including need identification, pre-solicitation, solicitation preparation, solicitation process, evaluation, and the award process. The following subsections address the required steps to complete the RFP process within each of these stages. The state entity’s use of SPD’s approved RFP templates and related RFP forms is mandatory unless a written exception has been granted by the SPDAC. All SPD approved templates and forms referenced within Section 5.8 are available online at the following link:

<http://doas.ga.gov/StateLocal/SPD/Seven/Pages/Home.aspx>.

a. Need Identification

The procurement process first begins with the identification of a purchasing need. Once a purchasing need has been identified, the APO/CUPO must make several determinations, including, but not limited to, (i) whether or not the needed good/service is exempt from the State Purchasing Act, (ii) whether or not the needed good/service may be satisfied by an existing contract or established source of supply (Section 2 “Order of Precedence” of this chapter), and (iii) whether or not special procurement policies apply such as the emergency purchasing process or the sole source process. For purposes of the discussion of the RFP process, the APO/CUPO must have determined that it is appropriate to conduct a competitive solicitation to satisfy the purchasing need.

b. Pre-Solicitation

Once the APO/CUPO has determined that it is appropriate to conduct a competitive solicitation to satisfy the purchasing need, the APO/CUPO must identify the correct purchasing method. The RFP process may only be used as a method of solicitation after a written determination has been made that the use of competitive sealed bidding (i.e. the RFQ process) will not be practicable or advantageous to the State. Unless SPD has granted DPA to a state entity to make the RFP certification on its own, the state entity must submit a written request and justification to SPD for permission to issue and conduct the RFP.

c. Solicitation Preparation

Once the written certification has been made to justify the use of the RFP process, the APO/CUPO must begin the process of drafting the RFP requirements, establishing the evaluation criteria which will be used to determine contract award, and identifying potential members of the evaluation committee.

- i. Drafting the RFP. To ensure proper development of the RFP, the APO/CUPO must utilize the most current version of SPD’s approved RFP template as follows: (1) for RFPs that will be posted to Team Georgia Marketplace, please use SPD-SP020 State Entity eRFP Document or (2) for RFPs that will not be available through Team Georgia Marketplace, please use SPD-SP018 State Entity RFP Template (Paper/Non-PeopleSoft). The state entity must interview any individuals who will contribute to preparing the solicitation, including, but not limited to, third party consultants, to ensure no individual has an impermissible conflict of interest. Once the APO/CUPO has completed the appropriate RFP template, the state entity must then evaluate the draft RFP by utilizing the following online resource: SPD-SP016 RFP Preparation Scorecard.
- ii. Developing the Evaluation Team and Evaluation Criteria. During the solicitation drafting process, the state entity should identify the most critical factors contributing to the value or success of the proposed solutions to the RFP’s identified problem or need so that evaluation criteria must be developed. During the development of the evaluation criteria, the state entity will establish the total number of available points to be used by the evaluation team to score the technical proposal as well as the cost proposal. The evaluation document should not be posted as part of the RFP; however, at a minimum, the RFP must state the relative importance

of price and technical factors by stating the total number of points assigned to the technical proposal and the total number of points assigned to the cost proposal.

- iii. Identifying Evaluation Committee. Members of the evaluation team should have professional interest and expertise to effectively evaluate the proposals received in response to the RFP. Ideally, the members of the evaluation committee should be identified prior to the public posting of the RFP; however, at a minimum, the evaluation committee must be finalized before the state entity begins evaluation proposals. Once the evaluation committee members have been identified, each member must sign and remit the following form to the APO/CUPO: SPD-SP004 Evaluation Committee Member Participation Form.

d. Solicitation Process

After completion of the RFP and the evaluation criteria, the APO/CUPO is ready to begin the solicitation process. Whether or not the APO/CUPO may directly solicit the RFP is dependant on the level of DPA SPD has granted to the APO/CUPO's state entity. In the event the APO/CUPO does not possess sufficient DPA to conduct the RFP on its own, the RFP must be sent to SPD for processing. The following key steps are included in the solicitation process.

- i. Public Notice. The State must provide public notice of the RFP by posting an official announcement on the GPR. For those state entities utilizing Team Georgia Marketplace®, the system automatically creates an announcement on the GPR with the creation of the RFP. At a minimum, the public notice must include the RFP, including any relevant attached documents, as well as relevant NIGPT™ codes. Selecting relevant NIGPT™ codes is critical for increasing market awareness of the RFP, as the NIGPT™ codes trigger automatic email notices to those vendors who have current vendor registrations and who have elected to receive notice of such NIGPT™ codes. Finally, the State must comply with the minimum bid policy (Section 5.3) as well as the minimum posting period identified in Section 5.7 "Formal Sealed Bids" of this chapter. The State may, at its option, elect to provide additional advertisement of the RFP such as advertising the RFP in a newspaper or a publication with statewide circulation.
- ii. Identifying the Issuing Officer. The issuing officer is the state employee who will serve as the primary point of contact for issues regarding the RFP. The issuing officer must be identified in the public notice of the RFP on the GPR as well as the RFP itself. The issuing officer is responsible for all aspects of the solicitation process.
- iii. Posting Revisions. Any change to the RFP after the RFP has been posted, including but not limited to changes to the RFP requirements, its attachments, or the closing date and time, must be posted as official written addenda. All addenda must be posted prior to the closing date and time of the RFP; provided, however, the State may make change to the schedule of events after the closing date and time of the RFP for those activities which will not occur until after the close of the RFP, including, but not limited to the periods of time allocated for evaluation and

negotiations. When posting an addendum, the issuing officer must ensure vendors are provided adequate time to view and process the addendum. Depending on the magnitude of the revisions contained in the addenda and how much time is remaining prior to the closing date and time, the issuing officer may need to extend the closing date and time. A sample addenda form as been provided online as SPD-SPR007 RFX Addenda Form (Non-electronic) and SPD-SPR008 eRFX Addenda Form.

- iv. Vendor Questions. It is best practice to identify a period of time for vendors to submit written questions prior to the close of the RFP. The state entity must provide a written response to all timely questions by posting both the vendor questions and the state entity's written responses to the GPR prior to the close of the RFP. In the event the state entity makes a revision to the RFP as a result of its response to a vendor's question, the state entity must post a written addendum clearly identifying the revision to the GPR prior to the close of the RFP. A sample form has been provided online as SPD-SPR002 Vendor Q&A Template.
- v. Offerors' Conference. An offerors' conference is a public meeting hosted by the State, which concerns the RFP, occurs prior to the closing of the RFP and is open to all potential vendor participants. The general purpose of any offerors' conference is to share information by facilitating any of the following activities: open dialogue between the state entity and the vendor participants, live question and answer session, and/or conducting a site visit or "walk-through" at a relevant site. There is no requirement that a state entity host an offerors' conference for every RFP; however, in determining whether or not to host an offerors' conference, the issuing officer must consider whether there is critical information which cannot be adequately conveyed through the RFP but could be provided at the offerors' conference. For example, SPD strongly encourages site visits in the event the state entity is contracting for construction services or will be permitting a third party to operate a state-owned facility.

At a minimum, the RFP must identify the date, time and place for the Offerors' conference as well as whether a vendor's attendance at the offerors' conference is mandatory. The issuing officer serves as the facilitator for the offerors' conference and must be in attendance. A sample agenda/script for an offerors' conference has been provided online as SPD-SPR001 Offerors Conference Agenda/Script. This form is a sample only and should be modified to accurately reflect the state entity's offerors' conference.

- a) Mandatory Attendance. Use caution in determining whether or not attendance should be mandatory. In the event the RFP does not specifically state that attendance is mandatory, attendance shall be considered optional. It is best practice to document attendance at any offerors' conference; however, at a minimum, the issuing officer must document vendor attendance at a mandatory conference (e.g. utilize a sign-in sheet), including noting the time of arrival and/or departure of any vendor arriving late or leaving early. In the event vendor attendance to a mandatory offerors' conference is poor, the issuing officer

must consider whether it is in the best interests of the State to hold an additional “make-up” conference should and/or amend the RFP to designate attendance as optional. In any event, any revision must be made in writing by posting an official addendum prior to the RFP closing date and time.

- b) Encouraging Attendance. To facilitate vendors’ attendance (whether or not attendance is mandatory), the issuing officer must ensure there is a reasonable time period between (1) when public notice of the meeting is provided and (2) when the meeting actually occurs. It is best practice that an offerors’ conference would be conducted no later than seven business days prior to the closing date and time of the RFP as the offerors’ conference may generate additional vendor questions and/or revisions to the RFP. The issuing officer should provide information which will assist the vendor in attending the offerors’ conference. For example, the issuing officer should consider providing driving directions, information about available parking, whether picture ID is required to gain admittance, etc.
- c) Documenting the Offerors’ Conference. As noted previously, it is best practice to document all attendees at the offerors’ conference; however, at a minimum, the issuing officer must document vendor attendance at a mandatory conference (e.g. utilize a sign-in sheet), including noting the time of arrival and/or departure of any vendor arriving late or leaving early. A sample sign-in sheet is available online as SPD-SPR003 Offerors Conference Sign-in Form.

The state entity may, at its option, elect to provide for transcriptionist services such that a written record of the offerors’ conference would be available to all attendees. Statements made at an offerors’ conference shall not be considered revisions and/or additions to the RFP unless a written addendum is issued pursuant to the conference.

- vi. Receiving Proposals. The RFP must state the date, time and location at which all proposals must be received. The closing date and time for the RFP must also be maintained on the GPR notice. In the event the state entity is not utilizing Team Georgia Marketplace© to receive vendors’ proposals, the state entity must facilitate a process in which all proposals are time and date stamped upon receipt.
  - a) Maintaining Sealed Proposals. All proposals received by the state entity must remain unopened and stored in a secure place until after the closing date and time. No unauthorized person(s) shall have access to the proposals. An envelope that is not marked as a proposal or does not identify the vendor or solicitation may be opened solely for the purpose of identification. A record shall be made on the envelope stating the reason for opening the proposal as well as the date and time the proposal was opened, the solicitation to which the proposal



responded and the signature of the person who opened the proposal. The envelope shall be resealed until the RFP closing date and time and then maintained as part of the procurement file.

- b) Modifying or Withdrawing Proposals Prior to RFP Closing. A vendor may modify or withdraw a submitted proposal at any time prior to the RFP closing date and time by submitting a request in writing to modify or withdraw the proposal. An authorized representative of the offeror may modify or withdraw the proposal in person before the RFP closing date and time; provided, however, this process must be documented and maintained as part of the procurement file. In the event a mistake is not identified until after the RFP closing date and time, the state entity may allow withdrawal of the proposal upon receipt of the vendor's written request for withdrawal.
- c) Late Proposals. The state entity's time and date stamp shall be used to determine whether or not the proposal was submitted by the closing date and time. Although late proposals cannot be evaluated, late proposals must be marked as late and maintained as part of the procurement file. The issuing officer will identify the vendor submitting a late proposal as an unsuccessful offeror on the Notice of Intent to Award (if utilized) as well as the Notice of Award.

e. Evaluation and Negotiations

All proposals received by the RFP closing date and time will be evaluated in accordance with the following key steps. During the evaluation stage, the state entity may elect to request clarifications and/or, subject to SPD's approval and oversight, conduct one or more rounds of negotiations to solicit improvements to technical and/or cost proposals.

- i. Identifying Evaluation Committee. The state entity should have begun the process of identifying the evaluation committee members in the Solicitation Preparation stage. However, at a minimum, the evaluation committee members must be finalized before the state entity begins the evaluation process. Prior to releasing the technical proposal to the evaluation committee members, the issuing officer should identify the names of the vendors submitting proposals to the evaluation committee. The issuing officer should then discuss any existing conflicts of interests the evaluation committee members may possess based on the names of the participating vendors (e.g. current employment with the vendor, significant financial interest, litigation or other dispute, etc.). Any existing conflicts of interests should be addressed with SPD and/or the state entity's legal counsel to determine whether the conflict of interest is such that the individual should not participate on the evaluation committee. Finally, the issuing officer should share the following evaluation guideline with the evaluation committee and ensure that each member understands the evaluation process: SPD-EP010 RFP Evaluation Committee Guidelines.

- ii. General Evaluation Rules. The state entity is bound by the terms of the RFP as well as the established evaluation criteria. No changes to the evaluation criteria may be made after the closing date and time of the RFP. If a technical or cost proposal fails to meet a mandatory requirement, the state entity will determine if the deviation is material. A material deviation will be cause for rejection of the proposal. An immaterial deviation will be processed as if no deviation had occurred. The state entity shall have the right to reject any and all proposals submitted in response to the RFP, to reject any portion thereof, or to waive any minor irregularity or administrative requirement.
- iii. Administrative Review. The issuing officer should conduct a preliminary review of the received proposals to determine which technical proposals should be submitted to the evaluation committee for review. The administrative review should eliminate the following proposals: all late proposals, any proposal submitted by a vendor which is currently suspended or debarred by SPD, and any proposals which are missing critical required documents, such as a vendor submission that is missing either the technical proposal or the cost proposal.
- iv. Initial Scoring of Technical Proposals. All proposals which pass the administrative review will be submitted to the evaluation committee for initial scoring in accordance with the terms of the RFP, the state entity's established evaluation criteria and the guidelines contained in SPD-EP010 RFP Evaluation Committee Guidelines.
- v. Clarifications. When reviewing any proposal, the evaluation committee may request the issuing officer seek written clarification from a participating vendor at any time. A request for clarification may be made when a proposal contains conflicting information or is so ambiguous that it is possible for a reasonable person to attribute different meanings to the ambiguous portion of the proposal. A request for clarification may not be used to negotiate (i.e. request the vendor revise or improve its proposal). Written clarifications received from the vendor will become part of that vendor's technical proposal.
- vi. Oral Presentations and Site Visits. The state entity may conduct site visits and/or request offerors make oral presentations as permitted by the RFP. The evaluation team may lower the vendor's technical score as appropriate as a result of the evaluation team's evaluation of the vendor's oral presentation and/or site visit. In the event the RFP and/or the state entity's established evaluation criteria reserves points for the oral presentation and/or site visit, then the evaluation team may increase the vendor's technical score as appropriate based on the evaluation team's evaluation of the vendor's oral presentation and/or site visit.
- vii. Initial Scoring of Cost Proposals. The issuing officer or his/her designee will analyze the cost proposals independently of the evaluation committee, but may perform the cost evaluation concurrently with the evaluation committee's initial scoring of the technical proposals. Cost proposals and the resulting cost scores will not be shared with the evaluation committee until after the initial scoring of the technical

proposals has been completed. As applicable, the state entity may utilize lowest cost, lowest total cost, total cost of ownership or greatest savings to determine the best price proposal; provided, however, the state entity must abide by any statements within the RFP regarding cost evaluation. The cost proposals may be scored on an overall basis or at the category/subcategory/line level (as applicable) relative to other proposals. The vendor deemed to have the most competitive cost proposal overall, as determined by the state entity, will receive the maximum score for the cost criteria. Alternatively, in the event the cost proposal is scored at the category, subcategory or line level, the state entity may assign the maximum score per category/subcategory/line for the most competitive proposal at that level. As a general rule, other proposals will receive a percentage of the maximum score based on the percentage differential between the most competitive cost proposal and the specific proposal in question. Nothing in this subsection (vi) shall supersede any provision within the RFP or the state entity's established evaluation criteria regarding cost evaluations.

- viii. Georgia Enterprises for Products and Services. The State Use Law set forth at OCGA 50-5-135 et seq. is intended to create opportunities for disabled persons employed by community based rehabilitation programs and training centers that are certified by the State Use Council. Based on these statutes, any proposal received from GEPS will receive a 5% to 8% price preference as approved by the Department of Administrative Services for purposes of cost evaluation.
- ix. Total Combined Score. As a general rule, each vendor's initial technical score and cost score will be combined to create a total score; provided, however, nothing in this subsection shall supersede any provision within the RFP or the state entity's established evaluation criteria regarding the calculation of total scores.
- x. Negotiations. SPD possesses discretionary authority to conduct one or more rounds of negotiations with select vendors to solicit revisions to technical and/or cost proposals as permitted by Georgia law and SPD's established procurement policy. This subsection describes SPD's process for utilizing its discretionary negotiation authority as defined by O.C.G.A. Section 50-5-67(a)(6).
  - a) Authority to Conduct Negotiations. No state entity is permitted to conduct negotiations of technical and/or cost proposals without SPD's supervision unless SPD has expressly authorized the state entity to conduct negotiations on its own except that the state entity is permitted to conduct a *single* round of negotiation of cost proposals provided no changes are made to the technical proposals. The authority to conduct negotiations is separate and distinct from the authority to conduct an RFP; therefore, SPD's delegation to a state entity to conduct an RFP is not authorization to conduct negotiations.

The authority to conduct negotiations is a discretionary process and the State shall not be required to conduct negotiations. In

some instances, the condition supporting negotiations may be known to the state entity prior to issuing the RFP. However, in some instances, the condition supporting negotiations may not be known to the state entity until some time after the competitive solicitation process has begun.

- b) Negotiation Team. If the state entity elects to proceed with negotiations, a negotiation team will be convened, which may be the same team as the evaluation committee for the RFP. Once convened, the negotiation team shall confirm the purpose and scope of negotiations and the identity of the offerors who will be invited to participate in negotiations.
- c) Select Vendors. Negotiations may only be conducted with vendors who are deemed qualified and reasonably susceptible for contract award based on criteria set forth in the solicitation document (hereinafter “Qualified Vendors”). The state entity may conduct negotiations even if there is only one Qualified Vendor. In the event the state entity elects to conduct negotiations, all Qualified Vendors must be allowed to participate unless the RFP expressly permits the state entity to limit the number of Qualified Vendors invited to participate in negotiations. Examples of limiting the number of Qualified Vendors includes, but is not limited to, establishing a specific number of Qualified Vendors or defining a methodology that establishes a competitive range of Qualified Vendors based on rankings of total combined scores. No state entity may change the approved negotiation language contained in SPD’s published RFP template without obtaining prior written approval from the SPDAC.
- d) Negotiation Invitations. Vendors selected to participate in negotiations will be notified in writing by the issuing officer (i) that the state entity is initiating negotiations; (ii) the general purpose and scope of the negotiations; (iii) the anticipated schedule for the negotiations; and (iv) the procedures to be followed for negotiations. This information may be provided by the issuing officer in a single or separate document(s). The issuing officer may issue additional information and/or instructions to vendors participating in negotiations as needed.
- e) Rounds of Negotiations. Negotiations may occur in a single round or over the course of two or more rounds of negotiations as determined by the negotiation team. All revisions to proposals resulting from such negotiations shall be reduced to writing by the vendor and submitted to the issuing officer within the time prescribed by the issuing officer. In conducting such negotiations, there shall be no disclosure to competing vendors of any information contained in the competing vendors’ proposals (technical or cost). The issuing officer is authorized to

disclose to each vendor that vendor's scores and/or overall ranking.

- f) Scoring Supplemental Proposals. Any revised proposals received as a result of the negotiations process will be evaluated in accordance with the established evaluation criteria. Only the evaluation committee may score revised technical proposals.
- g) Terminating Negotiations. SPD/state entity may terminate negotiations and/or the solicitation at any time.
- xi. Contract Negotiations. In the event the state entity permitted vendors to submit exceptions to the state entity's proposed contract and the vendor(s) identified for contract award have submitted contract exceptions, such contract exceptions must be resolved within any time limit established by the RFP. In the event the state entity is unable to reach agreement as to contract terms with a particular vendor, the vendor will be ineligible for contract award and the state entity may award to the next best ranked vendor.

f. Award Process

Contract award, if any, shall be made to the responsible vendor(s) whose proposal(s) conforms to the RFP and is determined in writing to be the most advantageous to the state entity utilizing the established evaluation criteria. The contract file shall contain the basis on which the award is made. Public notice of the results of the RFP process must be provided in accordance with Section 5.12 Public Notice of this chapter.

## 5.8 Cancellation of Requests for Quotes or Requests for Proposals

An RFQ or RFP or other solicitation may be canceled, or any or all bids may be rejected in whole or in part as may be specified in the solicitation and which is in the best interests of the State in accordance with regulations. The reasons shall be made a part of the contract file.

## 5.9 Reverse Auctions

Reverse auctions may be used as a form of competitive bidding and as an alternative to sealed bidding. The reverse auction process allows the vendors to see the lowest bid but not the identities of the bidders during the bidding process. Once the reverse auction is closed, the SPD evaluates the bids and awards the contract to the lowest responsive and responsible vendor.

## 5.10 Compliance with Federal Requirements

Where the procurement involves the expenditure of federal funds, State Entities shall comply with federal law and authorized regulations which apply to the procurement. The APO/CUPO shall contact the SPDAC if the federally required contract clauses appear to conflict with state law. Federal and/or private grant funds are not exempt from the Purchasing Act. The rules of competitive bidding still apply.

## 5.11 Electronic Solicitation

Competitive sealed bids and proposals can be received by way of the Internet or other electronic means, however, any bids or proposals received must comply with security standards established by the Georgia Technology Authority. The advertisement of the electronic sealed bids and proposals will be publicly posted in accordance with the provisions of this manual, with directions on how to obtain access to the solicitation.

Electronic solicitations, including competitive sealed bids and proposals submitted electronically, will be administered pursuant to the “Georgia Electronic Records and Signature Act”. eQuote and Team Georgia Marketplace<sup>TM</sup> meet the sealed bid and proposal requirements by (1) electronically storing all bids/proposals submitted electronically through those systems and (2) not releasing such bids/proposals to the State Entity until the designated solicitation closing date and time. An electronic record meets any requirements for writing and an electronic signature meets any requirements for an original signature; provided, however, SPD may require or allow some documents to be submitted in “hard copy” (paper form) with original signatures. All public electronic records are subject to inspection under the provisions of the Open Records Act.

## 5.12 Public Notice

Public notice of expected contract awards and actual contract awards shall occur in the following manner:

1. Notice of Intent to Award. The Notice of Intent to Award is a form identifying the intended contract award to the apparent successful bidder(s)/offeror(s), the names of all bidders/offerors whose bids/proposals were rejected, and the reasons for rejection of the unsuccessful bidders/offerors. The Notice of Intent to Award is publicly posted before a contract award is made. Although the Issuing Officer may elect to provide individual notice of the Notice of Intent to Award to participating vendors as a courtesy, there is no requirement for personal notice. The Notice of Intent to Award is optional but recommended for all contracts with an estimated value of less than \$100,000.00. The Notice of Intent to Award is mandatory for all contracts with an estimated value of \$100,000.00 or more.

**SPECIAL NOTE FOR SOLE SOURCE ACQUISITIONS.** As further described in Chapter 3 of this manual, sole source acquisitions valued at \$5,000 or more must be publicly advertised on the Georgia Procurement Registry. The published sole source notice shall serve as the State Entity’s notice of intent to award for purposes of this section.

2. Notice of Award. The Notice of Award is a form identifying the contract award to the successful bidder(s)/offeror(s), the names of all bidders/offerors whose bids/proposals were rejected, and the reasons for the rejection of the unsuccessful bidders/offerors. The Notice of Award is publicly posted within one day of contract award. The Notice of Award is mandatory for all contracts. For all contracts with an estimated value of \$100,000.00 or more, the Notice of Award may not be issued prior to the expiration of

the protest filing period and the resolution of any protests received unless the State Purchasing Division Assistant Commissioner makes a written determination, after consulting with the State Entity, that award of the contract without delay is necessary to protect the interests of the State. If it is determined that it is necessary to proceed with contract performance without delay, the bidder/offeror with this contingent contract may proceed with performance and receive payment for work performed in strict accordance with the terms of the contract; however, such bidder/offeror shall not be entitled to reimbursement for any capital outlay costs, or other up front expenditures incurred in performing the contract.

3. Contract Award. All contract awards will be made by the issuance of a Notice of Award and/or a Purchase Order. The State has the authority to review any solicitation or award at any time and for any reason and all contracts shall be contingent upon and subject to defeasance by the protest procedures set out in this Manual. The signed contract is available for public view and inspection following the issuance of the Notice of Award and/or Purchase Order.

## ***Section 6: Types of Procurements***

### **6.1 State Entity Contracts**

1. **Defining State Entity Contracts.** State Entity contracts are contracts in which a State Entity is a contracting party. The phrase "State Entity contract" should be distinguished from "statewide contract," which refers to a contract established by DOAS to provide a mandatory source of supplies, materials, equipment or services for multiple State Entities. In contrast, the State Entity contract is generally solely for the use of the State Entity named in the contract. For an example of an exception, please see the section of the Manual concerning "piggybacking."
2. **Establishing State Entity Contracts.** To establish a State Entity contract, the State Entity must comply with competitive bidding requirements. The expected result of a successful procurement is a satisfactory agreement between the State Entity and the contractor for the desired goods and/or services at a competitive price. This agreement, or State Entity contract, includes the solicitation and the accepted proposal as revised by any negotiations or the final bid. Please note that only SPD may conduct rounds of negotiations as identified in O.C.G.A. Section 50-5-67(a)(6). Finally, the State Entity agreement includes certain contractual terms and conditions which provide further definition of the parties' rights and duties under the agreement.
  - a. **Delegated Purchasing Authority.** The State Entity contract may be established by the State Entity unless the estimated cost of the solicitation exceeds the State Entity's delegated purchasing authority (DPA). If the estimated cost of the procurement exceeds the DPA, the State Entity must submit a requisition to SPD.

- 1) **Monitoring the Open Contract.** If a State Entity establishes a contract in which the exact amount of goods and/or services to be purchased throughout the contract term is not fixed (also referred to as an "open contract") but the State Entity estimates the total purchases will not exceed the State Entity's DPA, then the State Entity must monitor the purchasing activity under the contract to ensure that the expenditures do not exceed the State Entity's DPA.
  - 2) **Special Request to Exceed DPA.** If the cumulative total of purchases throughout the duration of the open contract exceeds a State Entity's DPA, then the Request to Exceed State Entity Delegated Purchasing Authority (DPA) form (available online) needs to be completed by the State Entity and submitted to SPD for approval.
3. **Duration of the Contract.** The duration of State Entity contract terms may vary. When determining beginning and ending dates of the initial contract term, the State Entity must consider both its needs and its budget. To ensure the contract dates comply with state policy prohibiting the pledging of the state's credit, the State Entity must set aside sufficient funds to meet the entire financial obligation of the initial term of the contract when the contract is signed.
- a. **Multi-Year Contracts.** A State Entity may establish a multi-year contract within its delegated purchasing authority (DPA) by including a contract provision approved by SPD providing the State Entity the right to renew the contract after the initial term. All multi-year contracts in excess of a State Entity's DPA must be established by the SPD.
    - 1) **Exercising a Renewal Option.** Before exercising a renewal option, the State Entity must evaluate whether it is in the best interest of the State to renew the current contract rather than competitively bid the procurement. For more information on exercising a renewal option, the State Entity should access the contract administration section of the Manual.
    - 2) **Contract Assessment Report.** As part of the contract renewal process, the APO/CUPO must complete a Contract Assessment Report (available online) and maintain the report in the contract file. If the State Entity contract is outside of the State Entity's DPA, the State Entity must submit the Contract Assessment Report to SPD with a request for renewal at least sixty days in advance of the expiration of the current contract term.
  - b. **Contract Renewal Limitations.** No State Entity contract can exceed the initial term plus four (4) options to renew or a combined total of five (5) years without SPD approval. If a State Entity requires a contract to exceed a total of five (5) years, justification must be prepared and submitted to SPD.

## 6.2 Types of State Entity Contracts

1. **SPD Approved Standard Contracts.** SPD has developed contract forms and contractual terms and conditions to be utilized in developing State Entity contracts. The latest revised versions of SPD approved contract terms and



conditions will be maintained on the DOAS website at <http://www.statepurchasing.doas.georgia.gov>.

2. **Defining Types of State Entity Contracts.** A State Entity's selection of a contract will be dependent on the specifics of the solicitation.
  - a. **Subject Matter of the Procurement.** The contract terms and conditions are specific to the solicitation's subject matter, such as goods or services.
    - 1) **Contract to Procure Goods.** This type of contract is utilized when a State Entity procures a product.
    - 2) **Contract to Procure Services.** This type of contract is utilized when the State Entity desires the labor, time or effort of a contractor.
      - i. **Maintenance.** As an example of a service contract, a maintenance contract may be used for the upkeep of property that neither adds to its permanent value nor prolongs its intended life appreciably, but instead keeps it in an efficient operating condition. A maintenance contract for equipment should list the equipment to be maintained, serial numbers when possible, location of equipment, number and frequency of service calls and full details of services to be performed.
  - b. **Type of Financial Transaction.** In addition, the contract terms and conditions may be separated by the type of financial transaction the State Entity desires.
    - 1) **Purchase.** The most common financial transaction accomplished by a State Entity contract is the purchase of goods or services.
    - 2) **Rental or Lease.** A contract for the rental or lease of equipment is used when a State Entity requires the use of equipment owned by a vendor for a specified time, in return for compensation.
    - 3) **Installment Purchase.** An installment purchase contract may be used when a State Entity desires to purchase an item by making payment over time.
  - c. **Open v. Fixed Quantity Purchase.** An "open" State Entity contract is used when exact quantities needed are not known at the time the contract is established. A "fixed quantity" contract is used when exact quantities needed are known at the time the contract is established.

### 6.3 Insurance Limits

The insurance dollar limit coverage stated in the sample contracts section of the manual is recommended by State Purchasing. This recommendation does not imply that State Entities cannot change the recommended dollar amounts. Each State Entity should fully assess the risk for lowering the recommended dollar amounts based on the particular need.

## 6.4 Multi-Year Contracts

1. State Purchasing is authorized to execute on behalf of all State Entities multi-year lease, purchase, or lease purchase contracts for the acquisition of goods, materials, services, and supplies.
2. A contract for supplies, services or equipment may be entered into for any period of time deemed to be in the best interest of the State, provided the term of the contract and conditions of renewals or extension, if any, are included in the solicitation and funds are available for the first fiscal year at the time of contracting. Payment and performance obligations for succeeding fiscal years shall be subject to the availability and appropriation of funds.
3. No contract developed and executed shall create a debt of the state for the payment of any sum beyond the fiscal year of execution or, in the event of a renewal, beyond the fiscal year of such renewal.
4. The contract shall state the total obligation of the user State Entity for the fiscal year of execution and shall further state the total obligation, which will be incurred in each fiscal year renewal term, if renewed.
5. The contract shall terminate immediately at such time as appropriated and otherwise un-obligated funds are no longer available to satisfy the obligations of the user State Entity under the contract. The contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred.
6. The contract may provide for the payment by the user State Entity of interest or the allocation of a portion of the contract payment to interest.

## 6.5 Piggyback Cooperative Purchasing

Piggyback purchasing allows the issuing State Entity and the awarded vendor to agree to open up the contract for the use of other State Entities. However, the vendor must offer other State Entities the same prices, terms and conditions as that of the issuing State Entity. The contract is mandatory for the issuing State Entity and optional for all other State Entities.

1. A State Entity will be permitted to use another State Entity's contract only with the approval of the SPDAC. The State Entity must submit documentation which includes the issuing State Entity's approval to "piggyback" on the contract, the contract number and the name of the vendor along with a justification as to why the other State Entity's contract should be used. The APO/CUPO must indicate whether there will be repetitive purchases or whether this is a one-time buy.
2. All State Entities that are given permission by the SPDAC to use another State Entity's contract must submit a monthly report listing other State Entity contracts that are being used along with a list of purchase orders and dollar amounts that have been issued against the other State Entity contract.

## 6.6 Notice of Award Amendments

1. State Entities must use the following procedures to make changes, revisions, extensions, renewals or cancellations to contract awards originally issued by a State Entity under the Delegated Purchasing Authority and Contract Awards originally issued by the SPD on behalf of a State Entity.
  - a. The APO/CUPO should issue a letter to the contractor stating the State Entity's desire to renew the contract at the same price, terms and conditions as the original contract. The letter should be issued to the contractor sixty (60) days prior to the expiration date of the contract. This allows the State Entity sufficient time to send out a new solicitation for bids in the event that the contractor is not willing to renew the contract at the terms requested by the State Entity.
  - b. The contract amount may change if the original contract included provisions for a change in terms. For example, the price may change if the original contract contained a price escalation clause. The letter to the contractor should contain the effective and expiration date of the original contract. In the event of a change, the letter should also contain a description of the change as well as any change in the monetary amount.
  - c. The renewal letter to the contractor can also provide for the contractor's approval signature and a date line with provisions for the letter to be returned to the State Entity. Or, the APO/CUPO may request that the contractor issue a letter of agreement on the contractor's letterhead.
  - d. The APO/CUPO should complete and issue the appropriate document which can be downloaded from the DOAS Procurement web site, for example, Notice of Contract Amendment, Notice of Contract Extension, or Notice of Contract Cancellation. If the State Entity operates under an automated procurement system, a system-generated change should be initiated. The APO/CUPO should issue to the vendor a copy of the appropriate Notice Form.
  - e. The APO/CUPO shall maintain a copy of each approved document in the original contract file.
2. Following is the process for renewing State Entity contracts originally issued at the State Entity level:
  - a. The APO/CUPO should issue a letter to the contractor stating the State Entity's desire to renew the contract at the same price, terms and conditions as the original contract. The letter should be issued to the contractor sixty (60) days prior to the expiration date of the contract. This allows the State Entity sufficient time to send out a new solicitation for bids in the event that the contractor is not willing to renew the contract at the terms requested by the State Entity.
  - b. The contract amount may change if the original contract included provisions for a change in terms. For example, the price may change if the original contract contained a price escalation clause. The letter to the contractor should

contain the effective and expiration date of the original contract. In the event of a change, the letter should also contain a description of the change as well as any change in the monetary amount.

- c. The renewal letter to the contractor can also provide for the contractor's approval signature and a date line with provisions for the letter to be returned to the State Entity. Or, the APO/CUPO may request that the contractor issue a letter of agreement on the contractor's letterhead.
- d. The APO/CUPO should complete and issue the appropriate document to the vendor in accordance with their internal operating procedures. The APO/CUPO should be cognizant of any price changes resulting from escalation or de-escalation clauses; and should ensure that all renewals contain original pricing as well as the changes in price. Documentation provided to the vendor should include at a minimum the same information contained on the Notice of Award Amendment form.
- e. The APO/CUPO shall maintain a copy of all pertinent documents in the original contract file.

## **6.7 SPD Established Contracts**

1. The APO/CUPO should send an electronic mail (e-mail) request to the SPD Issuing Officer indicating the original requisition number, vendor name, description of product or service, and action desired.
2. The SPD Issuing Officer will review the solicitation and award file for appropriateness of action and provide the APO/CUPO with authorization to proceed via reply e-mail.
3. The APO/CUPO should issue a letter of request to the awarded vendor(s) stating the action desired, effective and expiration date, if applicable, description of change, and any change in the monetary amount (original and new). The letter can provide for the vendor's approval signature and date line for return to State Entity or request that the vendor issue a letter of agreement on the vendor's letterhead.
4. The APO/CUPO should obtain the signed approval document from the vendor.
5. The APO/CUPO should download, complete, and sign the appropriate form. The APO/CUPO should then forward the form and signed Letter of Agreement from Vendor to the SPD Issuing Officer via e-mail or Facsimile transmission.
6. The SPD Issuing Officer will sign the Notice Form and send a copy of each form and any other necessary documentation to the originating State Entity.
7. The APO/CUPO and SPD will maintain a copy of all documents and transmissions in the original solicitation and award file.

## 6.8 Statewide Contracts

A Statewide Contract is a mandatory source contract set up by the SPD to consolidate volume purchases for goods and services. All State Entities are required to use statewide contracts when applicable. At the vendor's discretion and in accordance with the terms and conditions of the contract, local governments and municipalities may use the contracts.

### 1. Statewide Contract Releases

- a. The APO/CUPO should determine the State Entity's needs regarding specifications, delivery, and quantity and use the statewide contract, which meets these requirements.
- b. The APO/CUPO should contact the vendor to place the order using the P-card or by issuance of the purchase order.
- c. The item description, quantity, unit of measure, and unit price for each item ordered must be included when placing an order.
- d. The Statewide contract number along with the NIGP code shall appear on each order.
- e. The APO/CUPO or a designee should sign the purchase order release.

### 2. Statewide Contract Waiver Requests

- a. Waivers to contracts are allowed for purchases outside of existing contracts with approval from the SPD. Approvals will be limited to purchases with a specified time frame and/or dollar value. Justifiable reasons include, but are not limited to, the State Entity's ability to pay, cost, delivery time, compatibility with existing State Entity situations, or special valid needs not covered by existing contracts, or specifications.
- b. Requests for waivers shall be submitted by the APO/CUPO in writing to the Issuing Officer responsible for the contract for which the waiver is submitted. The contract name, number, quantity, price, and justification for the request shall be included. The Issuing Officer will notify the requester in writing with approval and a waiver number for the file. Waivers to statewide contracts do not relieve the State Entities of any bidding requirements.

### 3. Statewide Contract Development

- a. DOAS is authorized to establish centralized contracts such as statewide contracts that utilize standard specifications in order to decrease the overall cost of the commodities to the State. State Entities cannot purchase similar commodities covered by statewide contracts unless authorized by DOAS.
  - 1) When the APO/CUPO anticipates that the State Entity has a new combined purchase need for an item of continuous usage, representing significant dollar volume, suitable for standard purchase, or inventory reduction, the APO/CUPO should assemble data from the new item. This data should be relevant to the State Entity's requirements which may include but are not limited to the following items:

- Past or anticipated usage
  - Past average price per unit
  - Delivery requirements including delivery time and the number of locations
  - Past or known vendors and performance evaluations and any vendors who are considered unsatisfactory
  - Forecasted annual usage by delivery location
  - Required inventory levels and anticipated lead time
  - Special or unique conditions
  - Other State Entities known to use the item
  - Past annual number of orders for the item
- 2) The APO/CUPO should submit information with data to the State Purchasing Acquisition Manager for Statewide Contracts requesting that a new contract be investigated.
  - 3) The State Purchasing Acquisition Manager for Statewide Contracts will discuss the item with the appropriate staff and assign the item to the work schedule for research and development.
  - 4) The State Purchasing Acquisition Manager for Statewide Contracts will review the requirements in conjunction with other State Entities that possibly have the same requirements. If the requirements of the submitting State Entity and other State Entities appear to be sufficient, then the State Purchasing Acquisition Manager for Statewide Contracts will begin the process of developing a new statewide contract. However, if the requirement is not large enough or appears to be localized to the requesting State Entity, then the State Purchasing Acquisition Manager for Statewide Contracts will notify that State Entity to prepare a purchase requisition for an Open Contract.
  - 5) APO/CUPOs are encouraged to submit their specific requests on a regular and continuing basis to ensure that their most urgent needs are reflected in the current work schedules and are invited to contact the SPD to discuss their consolidating and contracting ideas.
  - 6) The SPD may form a Users Group with technical skills within the commodity area for SWC to provide their expertise and guidance during the evaluation process.
- b. Scheduled Buys
- 1) The APO/CUPO should submit requests for specific items to be developed for scheduled buys in accordance with the general procedure for development of term contracts or consolidated purchases.

- A scheduled buy item is one scheduled for combined bidding and purchase for all State Entity requirements at one time, usually on an annual biannual, quarterly, or monthly basis.
  - For optimum purchasing benefit, a scheduled buy item should be ordered for delivery in one lot to each delivery location. This usually requires storage availability by each State Entity. If a single bulk delivery is not feasible, specific scheduled deliveries to each State Entity can usually be provided in the order.
  - A firm quantity commitment is necessary for a scheduled buy item.
  - To be a good candidate for scheduled buying, an item should be of use to more than one State Entity, fairly high dollar volume, storable, of standard quality, of somewhat seasonal nature, and forecasted to be in a rising price situation.
- 2) The SPD buyer will incorporate items into the work schedule for development of the scheduled buy.
  - 3) The SPD buyer will research and develop items for feasibility of the scheduled buy. If scheduled, the SPD will notify the APO/CUPO and request the APO/CUPO to submit requisitions by a certain date.
  - 4) The APO/CUPO determines period requirements for his State Entity and submits a requisition to the SPD for the scheduled buy.
- c. Administrative Fee

The Department of Administrative Services (DOAS) is authorized to collect moneys, rebates, or commissions payable to the State that are generated by supply contracts established pursuant to Code Section 50-5-57 and DOAS designates a vendor or vendors as authorized sources of supply (whether for goods or services). Pursuant to this authority, DOAS may elect to impose administrative fees on statewide contracts. The purpose of the administrative fee is to support and increase DOAS' provision of services and resources to its customers. For example, the administrative fee may be used to manage existing statewide contracts, establish new statewide contracts, fund training and developmental courses offered by DOAS to procurement professionals, and support technology initiatives. If DOAS elects to impose an administrative fee, the fee may be initially identified in the solicitation or subsequently identified in the statewide contract. Administrative fees shall be collected and remitted in accordance with the terms of the respective statewide contract.

## 6.9 Sole Source

1. Definition. Sole source acquisition means a contract for the purchase of supplies and/or services that is entered into or proposed to be entered into by a State Entity after soliciting and negotiating with only one source. Sole source acquisition shall not include any of the following:

- a. Purchases from existing State Entity or statewide contracts,
  - b. Approved “piggybacking” purchases,
  - c. Contracts for services performed by non-profit entities,
  - d. Intergovernmental agreements,
  - e. Purchases which, either through statute or other regulation, are exempt from the competitive solicitation process and/or the State Purchasing Act, and/or
  - f. Any contract resulting from a competitive solicitation conducted in accordance with the provisions of this manual even if only one responsive and responsible bid/proposal is received.
2. Policy. For contracts with a value of \$5,000.00 or more, sole source acquisitions are prohibited unless the State Entity establishes justification why the needed supplies and/or services should not be procured through open competition. Sound procurement practice requires that a sole source acquisition occur when it is the only option and not as an attempt to contract with a favored service provider or for a favored product. Some examples in which a sole source acquisition could be acceptable are:
  - a. When only the proposed source can furnish the services because of its previous State Entity/Institute experience and having an alternative source duplicating these capabilities would result in excessive cost to State Entity/Institute. (Excessive cost must be quantified.)
  - b. When only one (1) supplier can satisfy the technical requirements because of unique technical competence or expertise. (Technical requirements must be valid and verifiable.)
  - c. The item does not satisfy the requirements for Sole Source, but the use of any other manufacturer’s product would result in excessive cost to State Entity/Institute. (Excessive cost must be quantified.)
  - d. When only one (1) source possesses patents or exclusive rights to manufacture or to furnish the item or service.
  - e. Other extenuating circumstances or considerations include, as applicable, adverse impacts on State Entity/Institute of not using the proposed source, and other considerations not previously stated.
3. Process. The APO/CUPO must complete the following steps prior to finalizing a sole source acquisition.
  - a. Conduct Market Research. To determine the appropriateness of a sole source acquisition, research must be conducted to determine if other products or service providers exist and can satisfy procurement requirements. Research resources include: Thomas Register, industry organizations, Internet searches, consultant reviews, Requests for Information, Buyers Laboratory, advertisements, or industrial publications.
  - b. Prepare Sole Source Justification. If the APO/CUPO determines the needed good or service should be procured as a sole source acquisition, the APO/CUPO must complete the Sole Source Justification Form.
  - c. Post Public Advertisement. State Entities must publish all intended sole source acquisitions with a value of \$5,000.00 or more to the Georgia Procurement



Registry for a minimum of five (5) business days. In the event the value of the sole source acquisition is not within the State Entity's DPA, the State Entity must either submit the sole source to SPD for processing or request SPD's approval to conduct the sole source advertisement by submitting to SPD a one time request to exceed DPA. During the posting process, the State Entity must select appropriate NIGP Codes to facilitate advertisement of the sole source acquisition.

- d. Invite Market Response. The purpose of publicizing the sole source notice is to offer other possible suppliers an opportunity to respond. Therefore, the GPR posting must include the following: a brief but descriptive summary of the good and/or service to be purchased, the identity of the sole source supplier, the completed Sole Source Justification Form; and instructions to interested suppliers to file any challenges to the sole source determination in accordance with SPD's established process for resolving protests. The published sole source notice shall serve as the State Entity's notice of intent to award.

SAMPLE NOTICE: [Insert State Entity Name] is providing public notice of its intent to award a contract to [Insert Name of Sole Source] to provide [Insert Description of Goods and/or Services.] [Insert Name of Sole Source] has been identified as the sole source for this purchase for the reasons stated in the attached Sole Source Justification Form. Any supplier capable of providing the identified goods/services may challenge this sole source determination by filing a written protest with the Assistant Commissioner of State Purchasing in accordance with Section 3.8 of the Georgia Vendor Manual. The protest must be received prior to the closing date identified herein.

- e. Resolve Challenges to Sole Source Determination. In the event a supplier capable of providing the needed goods/services desires to challenge a sole source determination, the supplier must file a protest with the SPDAC prior to the close of the sole source notice. Any such protest shall be resolved in accordance with the provisions of this manual.
- f. Contract Award. In the event the sole source determination is not successfully challenged, the State Entity may proceed directly to contract award.

## 6.10 Sole Brand

Before making a determination of Sole Brand, research must be conducted to determine if other products exist which can also satisfy procurement requirements in a timely manner. Sound procurement practice requires that a Sole Brand procurement be used only when it is the last justifiable option, and not as an attempt to contract for a favored product. An approved Sole Brand request allows for the insertion of "No Substitute" after the commodity is specified by brand name, model number, or some other designation identifying a specific product of a manufacturer.

In a Sole Brand situation, the end user or the APO/CUPO must complete the Sole Brand Justification Form and do one of the following: attach it to the appropriate file when the procurement is handled at the State Entity level or attach it to the Purchase Requisition form when the procurement is to be handled by the SPD.

The following information must be included:

1. Scope of Work:

Information to establish the context of the sole brand, for example, the function of the item or service function. Provide where and how the item or service is to be used, operational environment, and previous experience or history. Identify any efforts made to locate other possible sources, such as review of Thomas Register, Industry Organizations, and Internet searches, Consultants, Requests for Information, Buyers Laboratory, and Advertisements in Industry Publications and contact with Buyer.

2. Sole Brand Justification:

Some requirements may need to be provided by a certain manufacturer, for example, “to match existing uniforms.” Explain why only a particular style, type or manufacturer is acceptable. A request for “Sole Brand” does not automatically eliminate bidding requirements, as the item may be available from more than one vendor.

### 6.11 Pre-Bid Procurements (Expedited Procurement Method)

1. The APO/CUPO identifies a need to expedite the purchasing process for a requirement, which exceeds their Delegated Purchasing Authority, but in no case in excess of \$100,000.00
2. The APO/CUPO sends a written request to the appropriate Purchasing Acquisition Manager (PAM) in the SPD to obtain approval to handle the requirement as a pre-bid.
3. Upon written authorization from the PAM, the State Entity issues an RFQ for the requirement making sure all purchasing guidelines are followed.
4. Once all bids are received, a copy of the RFQ, bid solicitation list, lowest bid meeting all requirements of the specification, bid tabulation, and any other pertinent information must be submitted to the PAM for review. If the Purchasing Acquisition Manager agrees with the State Entity’s recommendation for award, the APO/CUPO will be given written approval to proceed with the award.
5. For an open market procurement, the APO/CUPO issues a purchase order. For a State Entity contract, the APO/CUPO issues the Notice of Award and any subsequent purchase orders.
6. The APO/CUPO documents the file with the written approval received from State Purchasing to proceed with the award.

### 6.12 Purchasing Card

I. Program Overview

The State of Georgia Purchasing Card (P-Card) is a charge card designed to enable authorized, full-time State of Georgia employees to make small value purchases of supplies, materials, equipment, and services for State business use. The program

streamlines payments by eliminating the administrative burdens and costs associated with traditional methods of payment.

The P-Card Program (Program) utilizes a VISA® purchasing card issued by Bank of America (Bank) pursuant to a contract awarded to the Bank by the Department of Administrative Services (DOAS) State Purchasing Division in July 2005. The P-Card can only be used for official State of Georgia business and must be surrendered upon termination of employment for any reason or upon demand by the State of Georgia or by the cardholder's employer.

The P-Card is the only purchasing card authorized for use by employees of any State Entities, the Board of Regents, Colleges, Universities, and technical schools, referred to as "State Entity", "Entities", or "Program users" in this policy.

All Entities are required to use the Works™ Payment Manager (Works™) system provided by the Bank, or other system approved by State Purchasing Division, for card administration and monthly billing statement reconciliation. (Exception: Entities utilizing Team Georgia Marketplace™ will reconcile P-Card transactions with the PeopleSoft application integrated into Team Georgia Marketplace; for Team Georgia Marketplace™ participants only Works™, is not required.)

The terms of the contract with Bank of America also permit State Authorities and Commissions, local governments (counties), and municipalities ("Local Entities") to use the program. DOAS recommends that local entities participating in the program adopt and adhere to this Statewide Purchasing Card Policy; however, DOAS also recognizes that local governments are ultimately accountable not to DOAS but to the county Boards of Commissioners, city councils, or other governing bodies which approve local government budgets and oversee local government financial affairs. Accordingly, it is the responsibility of the appropriate governing body to put into place a purchasing card policy and ensure their local entity adheres to that policy.

The State Cards Program Manager approves all participation in the program.

All card program official forms mentioned in this policy can be found on the State Purchasing Division web site at <http://statepurchasing.doas.ga.gov>. The versions on the web site will always be the latest versions.

## II. Use of the Purchasing Card for Personal Purchases Prohibited

Under no circumstances is a cardholder permitted to use the P-Card for personal purchases. Using the P-Card for personal purchases may result in disciplinary action, up to and including termination from State employment and criminal prosecution. The Official Code of Georgia, Annotated (O.C.G.A.), §50-5-80 states that any cardholder who knowingly uses the card for personal purchases under \$500 is guilty of a misdemeanor. A cardholder who knowingly uses the card for personal purchases of \$500 or more is guilty of a felony punishable by one to 20 years in prison. Supervisors or other approving officials who knowingly, or through willful neglect, approve personal or fraudulent purchases are subject to the same disciplinary actions as cardholders.

Criminal background checks are to be done on all cardholders as explained in Subsection VII, Legal Issues, paragraph B, of Section 6.12 of the Georgia Procurement Manual.

### III. Statewide Program Administration

#### A. State Purchasing Card Policy

The DOAS State Purchasing Division (SPD) administers the contract on a statewide level. In this capacity, SPD personnel serve as resources for all program users in the areas of policy development and implementation, day-to-day administration of the program on a statewide level, audit, staff development, and cardholder training.

SPD has developed this State Purchasing Card Policy (Policy) to establish minimum standards for use of the P-Card in order to ensure compliance with all applicable State laws pertaining to purchasing as contained the Georgia Procurement Manual. The version of the Policy posted on the SPD web site will always be the official Policy governing the P-Card program, notwithstanding any conflict with the Policy as identified in this manual. The effective date of the Policy will be in the footer of the online version of the document. SPD will maintain an archive of previous versions of the Policy, which will be available upon request should the need arise.

#### B. State Cards Program Manager

The State Cards Program Manager will:

1. Develop the State Purchasing Card Policy.
2. Review the Policy at least annually to ensure that it is in keeping with “best practices” in the purchasing card industry and that it allows participants in the Program to utilize the P-Card to its utmost advantage in the procurement process within sufficient controls guidelines.
3. Work with other areas of SPD and with other Program users to determine new ways that the P-Card can be used within legal and Policy requirements.
4. Serve as a central point of contact on all issues of policy and procedure. This position is the official liaison between the Bank and all Program users.
5. Communicate all Program and Policy changes to Program users.
6. Review or assign a designee to review all requests for exceptions to this Policy and decide on the appropriateness of each request.
  - i. Approvals for the following policy exceptions are coordinated through the local Card Program Administrator once original approval is granted by the State Cards Program Manager:
    - (a) Increases in spending limits above State-mandated levels
    - (b) Approval to use the P-Card to pay for vehicle repairs and maintenance
    - (c) Permanent activation of a Merchant Category Code

- ii. All other types of policy exceptions must receive prior, written approval from the State Cards Program Manager or his or her designee for each occurrence.

7. Develop and maintain statewide Program forms.
8. Collaborate with the DOAS Professional Development unit to develop and maintain statewide training materials and manuals.

#### C. Process Improvement and Audits

1. The DOAS Process Improvement and Audits unit conducts periodic reviews of the programs at Entities under SPD purchasing authority. Reviews take a risk-based approach and focus on the level of compliance with State Policy, adequacy of and compliance with internal policies and procedures, and evaluation of internal controls.
2. The unit issues reports providing an assessment of the Program, makes recommendations for improvement when warranted, and works with the Program personnel to implement action plans to make corrections or other improvements to the Program.
3. In those cases where it is determined that internal controls are not adequate, Process Improvement and Audits has the authority to require policy improvements and/or place other restrictions on the local card program until such controls are developed, documented, and implemented.

#### D. Professional Development

1. The DOAS Professional Development unit assists in developing and delivering training on the P-Card Program on a statewide basis.
2. The Bank is responsible for the implementation and initial training on the Works<sup>TM</sup> system. The DOAS Professional Development unit will provide additional training in the system as needed.
3. Collaborate with the State Cards Program Manager and with DOAS Process Improvement to develop training materials for administrators, supervisors, cardholders, and auditors.

### IV. State Entity Program Roles and Responsibilities

The Agency Procurement Officer or the College/University Procurement Officer (APO/CUPO) serves as the official liaison between the Entity and the State Cards Program Manager for all matters related to the local Program. This individual usually serves as the Purchasing Card Program Administrator (Administrator), although any or all of the following administrative responsibilities may be delegated to one or more Card Program Coordinators, depending on the size and complexity of the local program.

#### A. Card Program Administrator Responsibilities

1. Program Administration

- i. Develop the internal policy governing the use of the P-Card, to include, the following minimum requirements:
    - (a) Ensure compliance with the State Purchasing Card Policy;
    - (b) Provide for unique needs based on mission;
    - (c) Define responsibilities of Program personnel;
    - (d) Define criteria for obtaining a P-Card;
    - (e) Define acceptable use of the P-Card that cannot be less restrictive than State Purchasing Card Policy;
    - (f) Provide a method for reporting suspected misuse or fraudulent use;
    - (g) List in detail consequences of misuse or fraudulent use;
    - (h) Create a provision for review of the internal policy for adequacy at least annually; and
    - (i) Create a provision for audit or other independent review of all areas of program administration and transactions at least annually.
  - ii. Work with management throughout the organization to determine the appropriate spending limits for the Program as a whole and for individual cardholders based on budget constraints, cardholder job responsibilities, historical spending patterns, and overall procurement practices.
  - iii. Register as Card Program Administrator with the State Cards Program Manager using Form SPD-CC001, Designation of Card Program Administrator. After initial registration, notify State Cards Program Manager of any changes in local Program Administrator information using Form SPD-CC001, Designation of Card Program Administrator.
  - iv. Designate the following Program administrative positions as needed and ensure coordination among the positions:
    - (a) Card Program Coordinators;
    - (b) Electronic Contact to handle data transmission matters; and
    - (c) Settlement Contact to handle monthly payment matters.
  - v. Work with management to identify job titles/positions within the organization that require a P-Card or that would be good candidates for use of the P-Card.
  - vi. Develop written internal procedures for requesting P-Cards and approving cardholders. The appropriate form is the Purchasing Card Profile, Form SPD-PC002.
2. Program Compliance
- i. Establish written procedures to ensure compliance with, or request exceptions to, State purchasing laws and regulations, the Georgia

Procurement Manual, the State Purchasing Card Policy, and the internal purchasing card policy.

- ii. Coordinate any exceptions to the State Purchasing Card Policy with the State Cards Program Manager or his or her designee.
  - (a) Initiate all requests using the Special Approval Request, Form SPD-PC003.
  - (b) Document review of the status of all exceptions on an annual basis to determine if the exceptions should still be granted and notify SPD of any revocations.
- iii. Ensure that the Entity has sufficiently documented internal controls and other measures (e.g. audits) to prevent and/or detect misuse or fraudulent use of the P-Card.
- iv. Establish written procedures to ensure security over P-Card account information to include:
  - (a) Ordering and receiving new and replacement cards;
  - (b) Reporting lost or stolen cards to the Bank and to the Program Administrator and/or Coordinator(s);
  - (c) Collecting and destroying cards when cardholders transfer to jobs not requiring a P-Card, resign, or are terminated; and
  - (d) Canceling cards in the Works<sup>TM</sup> system immediately upon notification of theft/loss of the card or upon termination of cardholder's employment for any reason.
- v. Establish written procedures to ensure that misuse or fraudulent use of the P-Card is documented. Minimum requirements include:
  - (a) Documentation of the transaction (e.g. copies of receipts, invoices);
  - (b) Evidence of who conducted the transaction, who approved the transaction, and when and how the misuse or fraud was discovered;
  - (c) Documentation of personnel actions taken (e.g. cardholder was terminated); and
  - (d) Notifying the Bank immediately when fraud or card misuse occurs in order to properly meet the Bank's guidelines regarding Bank reimbursement of transactions related to fraud or card misuse.
3. Appropriate limits on the number of cardholders assigned to a supervisor or approving official in order to ensure adequate review of business need and documentation (transaction logs, receipts/invoices, and monthly billing statement) for each purchase.
4. Training – Develop an Entity-specific training program for all cardholders and supervisors/approving officials to include:

- i. Mandatory Cardholder Agreement specifying terms and conditions for use of the card;
- ii. State Purchasing Card Policy;
- iii. Internal purchasing card policy;
- iv. User manual; and
- v. Familiarity with all forms, including the Sales and Use Tax Exemption form and transaction log.

5. Using the P-Card

- i. Establish written internal procedures covering how to use the P-Card, including telephone, fax, and Internet orders, in order to maintain security over P-Card account information.
- ii. Monitor cardholder accounts for inactivity and close accounts that are no longer needed.
- iii. Establish written internal procedures for compliance with State Policy regarding documentation of transactions.

6. Accounting Requirements

- i. Designate the storage location for all original transaction documentation.
- ii. Establish billing discrepancy procedures, including disputed transactions.
- iii. Establish reconciliation procedures between cardholders, supervisors/approving officials, and Accounts Payable to ensure timely payment of the corporate monthly billing statement.

B. Supervisors / Approving Officials

Supervisors or other persons assigned the responsibility of reviewing cardholder transactions must have a thorough knowledge of the job responsibilities of the cardholders under his/her supervision in order to determine if purchases are reasonable in terms of types of purchases made. Before approving the purchasing card log and/or monthly billing statement, the supervisor must carefully review all documentation.

Supervisor responsibilities include:

1. Maintain knowledge of State Purchasing Card Policy and internal policies and procedures on use of the P-Card.
2. Request P-Cards for employees under his/her supervision.
3. Notify the Program Administrator when a cardholder resigns, transfers, or is terminated from employment.
4. Monitor transactions and card activity to ensure that all purchases are for legitimate State business use.
5. Review all documentation to ensure:
  - i. Invoices/receipts and transaction logs have the required information;



- ii. State Sales and Use Tax was not charged;
- iii. Purchases were for legitimate State business use;
- iv. Transaction logs and cardholder monthly billing statements contain the cardholder's original signature;
- v. Sign the monthly billing statement and/or cardholder transaction logs signifying review and approval for payment. This responsibility cannot be delegated to another person;
- vi. All signatures must be original signatures. Signatures made with rubber stamps are prohibited;
- vii. Submit all documentation and monthly billing statements for payment according to internally established procedures to ensure timely payment of the corporate billing statement.

### C. Cardholders

All cardholders are de facto purchasing agents for the State of Georgia and their individual employers. Accordingly, all cardholders must have a minimum understanding of State purchasing laws, State Purchasing Division rules and regulations as contained in the Georgia Procurement Manual, and internal purchasing rules. Cardholders must also be familiar with the provisions of O.C.G.A. §45-10-1 et seq. regarding State Employee Code of Ethics and Conflicts of Interest.

Cardholder responsibilities include:

1. Maintain security of the account number, expiration date, and security code at all times.
2. Maintain knowledge of State Purchasing Card Policy and internal policies and procedures.
3. Ensure all purchases are allowable purchases according to State and internal purchasing card policies.
4. Ensure all purchases comply with purchasing requirements of the Georgia Procurement Manual concerning Order of Precedence and Competitive Bidding.
5. Obtain "best value" for the State when making purchases with the P-Card.
6. Maintain all documentation required by State and internal purchasing card policies. Minimum documentation requirements are:
  - i. Monthly or weekly transaction log as determined by the Program Administrator and purchasing volume;
  - ii. Itemized receipt of invoice;
    - (a) If receipt has been lost and a duplicate cannot be obtained, the local PA can determine if internal policy will allow use of the Lost Receipt

Affidavit, Form SPD-PC005. If allowed, a single cardholder can use the form no more than three times in one fiscal year.

(b) Use of the form more than three times in one fiscal year will result in suspension of card privileges.

iii. Monthly billing statement sent to the cardholder from the Bank.

7. Sign the transaction log and the monthly billing statement. All signatures must be original signatures. Signatures made with rubber stamps are prohibited.
8. Submit all documentation to the supervisor or other approving official by internally established deadlines in order to ensure timely payment of the monthly billing statement.

#### V. Use of the Card

This Policy establishes appropriate and inappropriate uses of the card. All purchases made with the P-Card must be for official State business. Internal policies governing use of the card can be more, but not less, restrictive than State Policy.

Only the employee whose name appears on the face of the P-Card is authorized to initiate transactions with the card. Use of the card by any other person is considered misuse of the card, even if the purchase is for legitimate State business.

Use of the card for personal purchases is strictly prohibited and will result in disciplinary action, including termination of employment and criminal prosecution.

##### A. Allowable Purchases

The P-Card can be used for small value purchases of supplies, materials, equipment, or services, where not otherwise prohibited or restricted. All purchases must be within cardholder assigned spending limits unless prior, written approval is received to exceed these limits. Card Program Administrators can manage spending limits up to \$5,000. Any Single Transaction Limit of \$5,000 or more must receive prior written approval from the State Cards Program Manager using the Special Approval Request, Form SPD-PC003.

Allowable purchases are:

1. Equipment – Single units under \$1,000 for State Entities, Commissions, or Boards, and under \$3,000 for colleges and universities under the authority of the Board of Regents. State Entity policy must address inclusion in or exclusion of specific types of equipment from any asset inventory systems. (Exception: Entities utilizing Team Georgia Marketplace™ may exceed these thresholds as Team Georgia Marketplace™ allows for the flagging of purchases for the asset inventory system in PeopleSoft. Those State Entities not utilizing Team Georgia Marketplace™ must obtain written approval from

the State Cards Program Manager or his/her designee prior to the purchase in order to exceed these thresholds.)

2. Supplies and materials up to the cardholder's approved Single Transaction Limit and/or approved cycle limit.
3. Single purchase of supplies and materials over \$5,000 provided the following requirements one of the following requirements has been met:
  - i. Statewide Contract (SWC), State Entity Contract, or mandatory source:
    - (a) No prior approval from the State Cards Program Manager is needed to exceed \$5,000. Changes to Single Transaction Limits and monthly cycle limits may be made to accommodate these purchases at the discretion of the P-Card Program Administrator.
    - (b) Documentation must include reference to the SWC or State Entity contract number.
  - ii. Open-Market Purchases:
    - (a) Purchase has been competitively bid using eQuote, the Georgia Procurement Registry, or other electronic solicitation tools;
    - (b) Cardholders have prior, written approval from the local Program Administrator, his/her supervisor, and the State Cards Program Manager using Form SPD-PC003, Purchasing Card Special Approval Request, to exceed the State Single Transaction Limit (STL); and
    - (c) Documentation must include a reference to the solicitation number.
4. Airline tickets and vehicle rentals for State personnel traveling on official State business as defined in the State Travel Regulations published by the State Accounting Office and the Office of Planning and Budget.
5. Special approval is not needed for the following types of purchases, within approved spending limits, for Colleges, Universities, and technical schools when such purchases are for official student activities:
  - i. Food and lodging for student activities (but not faculty, staff, coaches, other school employees, volunteers, or other persons not related to the school) when on official school business (e.g. athletic team travel). Documentation must follow guidelines for "group meals" in the State Travel Regulations:
    - (a) Itemized receipt showing all meals purchased
    - (b) Roster of participants showing name and signature of each student (for activities not open to the entire campus – e.g. athletic teams, student clubs)
    - (c) Copy of team schedule or other documentation showing that the meal was an authorized student activity
  - ii. Food for official research, laboratory animals, or instructional (classroom) use.

6. Food provided for consumption at events or services provided to the general public, state benefit recipients, and/or state program participants (other than State employees), or purchased for resale in gift shops, bookstores, etc., and other non-employee meal related use.
7. Purchases of goods or services intended for official State of Georgia work-related use which are not otherwise excluded in the Prohibited Purchases section,

#### B. Prohibited Purchases

The following types of purchases are strictly prohibited by State policy. No exceptions will be granted unless otherwise indicated. This list must be included in lists of prohibited purchases in policies at the local program level:

1. Personal purchases of any kind (Personal purchases are defined as purchases of goods or services intended for non-work related use or use other than official State business)
2. Cash advances, including use of the card or card number at Automated Teller Machines (ATMs), inside bank branches or at cash advance, quasi-cash, and money transfer locations such as Western Union, Telecheck, etc.
3. Gift cards, stored value cards, calling cards, pre-paid cards, or similar products
4. Employee travel expenses, including lodging, transportation, and meals, except as specifically covered under Allowable Purchases
5. Entertainment, including in-room movies, except as specifically covered under Allowable Purchases
6. Alcoholic beverages
7. Tobacco products
8. Fuel, repairs, and maintenance of State-owned or rental vehicles (exceptions can be granted upon verification of procedures to enter costs into Maximo, the State's fleet management system administered by the DOAS Office of Fleet Management)
9. Professional services as defined in O.C.G.A. §14-7-2(2)
10. Food for consumption by State employees unless the purchase qualifies as a "group meal" according to the State Accounting Office Group Meal Policy.

#### C. Declared Emergencies and Natural Disasters

The GPM grants authority to forego standard procurement requirements for needs arising from unforeseen causes. In cases involving the welfare of the general public, extreme weather conditions, or official declared emergencies, the Program Administrators are allowed to obtain after-the-fact approval for exceptions to this Policy.

1. The Program Administrator must submit the Form SPD-PC003, Special Approval Request, to notify the State Cards Program Manager within 72 hours

of any actions taken in response to these emergencies and the nature of the actions taken.

2. Documentation for transactions must follow guidelines for emergency purchases as contained in the Georgia Procurement Manual, including use of Form SPD-NI005, Emergency Justification Form, available in the SPD Official Forms section of State Entity Resources on the State Purchasing Division web site.

#### D. Sole Source / Sole Brand Purchases

The P-Card may be used for purchases resulting from Sole Source or Sole Brand acquisitions provided those goods/services are not identified in the prohibited subsection. Guidelines for Sole Source and Sole Brand purchases are found in the Georgia Procurement Manual.

1. Any request for a Single Transaction Limit of \$5,000 or more that would qualify as a Sole Source and/or Sole Brand must include Form SPD-NI003a, Sole Brand Justification, or Form SPD-NI004a, Sole Source Justification, or both as applicable.
2. These forms, and instructions for use, are available on the State Purchasing Division web site. These forms must also be attached to the transaction log and/or monthly billing statement as documentation for the transaction.

#### E. Exempt Purchases

The P-Card may be used to purchases exempt goods/services (a list of exemptions is provided in Chapter 2 of the Georgia Procurement Manual) to the extent those exempt goods/services are not identified in the prohibited subsection.

### VI. Program Compliance

#### A. Merchant Category Code Authorizations

Merchant Category Codes (MCC's) are assigned by a merchant's or vendor's merchant bank based on the type of goods or services that merchant or vendor typically provides. Allowing or blocking certain MCC's, while not a fail-safe protection against unauthorized use of the card, does provide a measure of protection against unauthorized or prohibited purchases.

1. The State Cards Program Manager establishes the State-authorized MCC groups that will be available to all Entities. Only those MCC's associated with merchants which provide the goods and services specifically allowed by this Policy are eligible for inclusion in State-authorized groups. Transactions at non-authorized MCC's are denied at the point-of-sale.
2. The State Cards Program Manager will conduct periodic evaluations of authorized MCC's in order to maximize appropriate use of the P-Card. The Program Manager will consult with other procurement and card program personnel within State Purchasing Division and/or outside State Purchasing Division when establishing or modifying these groups.

3. Entities can request activation of additional MCC's for inclusion in a State-authorized group and/or approval to create an MCC group to meet specific needs. Program Administrators can request prior, written approval for exceptions to this policy using Form SPD-PC003, Special Approval Request.

#### B. Internal Controls

Each Entity's internal purchasing card policy must establish an internal control structure that ensures compliance with State purchasing laws, State Purchasing Division rules and regulations as found in the Georgia Procurement Manual, State Purchasing Card Policy, and internal policy.

Internal controls must include:

1. Appropriate separation of duties between making transactions (cardholders), review and approval of transactions for payment (approving officials), and payment of the monthly billing statement (Accounts Payable).
2. Weekly independent review of all card maintenance activity if the Card Program Administrator is also a cardholder.
3. Appropriate hierarchical review and approval of purchases by someone with supervisory authority over the cardholder and/or with the authority to question purchases if needed.
4. No cardholder can provide approval for payment for his/her transactions or of the corporate monthly billing statement. Review and approval responsibilities cannot be delegated to someone else.
5. Appropriate limits on the number of cardholders assigned to a supervisor or approving official in order to ensure adequate review of business need and documentation (transaction logs, receipts/invoices, and monthly billing statement) for each purchase.
6. Provision for an annual independent audit or review of the purchasing card program by the Card Program Administrator, Internal Audit unit, or other unit assigned audit responsibilities. Reviews must address:
  - i. Adequacy of internal policies and procedures;
  - ii. Appropriateness of cardholder spending limits;
7. Adequacy of review, reconciliation, and payment procedures; and
8. Adequacy of documentation for transactions.

#### C. Cardholder Spending (Credit) Limits

Spending limits enable management to provide cardholders with the purchasing power to accomplish the needs of the job without exposing the State or the organization to unnecessary risk. Spending limits should be based on job responsibilities of the cardholder and/or of the job title. Cardholder spending limits must be reviewed at least annually to determine that actual usage is consistent with spending limits.

Spending limits that are available are:

1. Cycle (Credit) Limit – The cycle limit is a mandatory spending limit that restricts the amount of purchases a cardholder can make in one billing cycle.
  - i. The cycle limit cannot be less than the cardholder's Single Transaction Limit.
  - ii. A cardholder's cycle limit cannot be more than \$10,000 without prior, written approval from the State Cards Program Manager.
  - iii. Please see Section IV.A.1.ii for guidance establishing a cycle limit per cardholder.
2. Single Transaction Limit (STL) – The STL is a mandatory spending limit imposed on each cardholder account.
  - i. A cardholder's STL must be less than \$5,000. The local Program Administrator can establish organization-wide and/or individual spending limits less than this, as determined by overall procurement and card program goals.
  - ii. Program Administrators can request prior, written approval for individual limits greater than or equal to \$5,000. Administrators must establish controls to ensure that cardholders:
    - (a) Make purchases only from Statewide Contracts (SWC), State Entity contracts, or mandatory sources since the bid process has already been conducted or
  - iii. Follow appropriate competitive bid procedures, including use of eQuote and/or the Georgia Procurement Registry (GPR).
3. Number of Transactions per Day (optional) – Management can choose to impose a maximum number of transactions on a cardholder account in order to control use of the P-Card.

#### D. Card Issuance Requirements

1. Issuance is limited to one Purchasing Card per cardholder.
2. Cardholders must be full-time State employees. There will be no exceptions to the following:
  - i. Cards will not be issued to part-time employees, temporary workers, or contractors.
  - ii. Cards will not be issued in the name of a Department or work unit to be shared by multiple employees.
  - iii. Cards will not be issued to employees of foundations associated with any Entity.
3. An employee's supervisor and the local Card Program Administrator must approve a cardholder's application for a P-Card. The appropriate P-Card application form is Form SPD-PC002, Purchasing Card Profile, or approved equivalent that contains at least the same information.

4. All training requirements as described in this Policy must be met before an employee receives the P-Card.

## VII. Legal Issues

### A. Failure to Comply with Laws, Policies, and Procedures

Cardholders or supervisors/approving officials who knowingly, or through willful neglect, fail to comply with the following may be subject to suspension or termination of card privileges or other disciplinary action, up to and including termination of employment and criminal prosecution to the fullest extent of the law.

1. Official Code of Georgia, Annotated (O.C.G.A.), sections related to governmental purchasing
2. Applicable requirements of the Georgia Procurement Manual
3. State Purchasing Card Policy
4. Internal policies and procedures governing procurement and the Purchasing Card Program.

The State Cards Program Manager and State Purchasing Division reserve the right to withdraw any authority or delegated approval due to non-compliance with applicable laws, rules, regulations, policies, and procedures, or the terms of any conditional approval.

### B. Cardholder Background Checks

O.C.G.A. §50-5-83(b)(12) requires criminal background checks on all employees hired for positions that are eligible for P-Cards.

1. Existing Cardholders as of July 1, 2008:
  - i. State Entities and Institutions must establish a schedule of criminal background checks for existing cardholders as of July 1, 2008, to ensure that backgrounds are checked prior to the next renewal date of the individual P-Cards.
  - ii. If any criminal background check against existing cardholders reveals any misdemeanors or felonies related to financial wrongdoing, theft, or other act of dishonesty, the cardholder's privileges are to be terminated immediately and notification sent to the State Cards Program Manager.
2. New Cardholders after July 1, 2008:
  - i. For new cardholders after July 1, 2008, prior to receiving a P-Card, each State Entity or Institution must perform criminal background checks on the prospective cardholders.
  - ii. If any background check of new cardholders after July 1, 2008, reveals any misdemeanors or felonies related to financial wrongdoing, theft, or other act of dishonesty, the employee is not eligible to receive a P-Card.

### C. Cardholder Credit Checks



In addition to background checks for new and current cardholders, O.C.G.A. §50-5-83(b)(12) also requires credit checks on all employees issued a purchasing card after July 1, 2008.

#### D. Competitive Solicitation

1. O.C.G.A. §50-5-69 requires competitive bidding for all open-market purchases anticipated to be \$5,000 or more. Use of the P-Card as a method of payment does not relieve the cardholder or the Entity of these responsibilities.
  - i. Because of the legal bid limits, all cardholders must have a Single Transaction Limit (STL) of less than \$5,000, except as noted below in section C.2.
  - ii. Cardholders are prohibited from splitting a transaction between two or more transactions on a single card or two or more transactions on multiple cards on the same day or on separate days in order to circumvent the bid process and/or any Single Transaction Limit, regardless of the level.
2. Where job responsibilities require cardholders to make single purchases of \$5,000 or more:
  - i. The local Card Program Administrator can approve Single Transaction Limits over \$5,000 with the approval of the cardholder's supervisor and the APO/CUPO / CUPO when the purchases will be from a statewide contract, a State Entity contract, or a mandatory source. However, this approval does not apply to open-market purchases.
  - ii. The local Card Program Administrator must use Form SPD-PC003, Special Approval Request, to obtain one-time approval from the State Cards Program Manager for any single open-market purchase of \$5,000 or more.
3. Cardholders who need to make open-market purchases of \$5,000 or more must use an informal bid process for any purchase greater than or equal to \$5,000 and less than \$10,000.
  - i. For any purchase of \$10,000 or more, cardholders must use the eQuote system or the Georgia Procurement Registry to obtain bids from the appropriate number of bidders.
  - ii. One-time approval to exceed \$5,000 will be granted upon submission of proof of the competitive bid process. Transaction documentation must include evidence of the appropriate bid process and be available for audit by the State Cards Program Manager, the SPD Process Improvement unit, or Internal Audit personnel.

#### E. Payment of State Sales and Use Tax

1. O.C.G.A. §48-8-3(1) exempts purchases made by State Entities from State Sales and Use Tax when payment is made with appropriated funds.
2. O.C.G.A. §48-8-3(8) exempts purchases made by the Board of Regents, Colleges, and Universities from State Sales and Use Tax.

3. Cardholders must present the Department of Revenue Sales and Use Tax Exemption, Form ST-5, to merchants upon request. This form is available on the Department of Revenue web site at [etax.dor.ga.gov](http://etax.dor.ga.gov) by searching for ST-5.
4. Cardholders are responsible for ensuring that merchants do not charge tax.
  - i. If taxes are charged, the cardholder must contact the merchant to obtain a credit to the card.
  - ii. Credits cannot be obtained by any other method, including, but not limited to, cash, gift card, gift certificate, or store credit.
  - iii. Documentation of attempts to obtain credit for any State Sales and Use Tax charged in error must be maintained with the documentation for the transaction where the tax was charged.

**F. Records Retention Requirements**

The Office of the Secretary of State maintains the official Records Retention Schedule for the State of Georgia. This information is available on their web site at [sos.georgia.gov](http://sos.georgia.gov) by searching for Records Retention Schedule.

1. Documents related to transactions are accounting records and must be maintained according to the requirements of Accounts Payable Files.
2. Documents related to the issuance of cards to employees are accounting records and must be maintained according to the requirements of Credit Card Administration Records.

**G. Internal Revenue Service 1099 Reporting**

1. Sections 6041 and Section 6041A of Internal Revenue Service (IRS) rules require any organization, including governments, to report “reportable transactions” in excess of \$600 per year using the Form 1099-MISC. Each Entity is responsible for establishing procedures to ensure compliance with all federal laws applicable to reporting purchases from these vendors.
2. The Bank provides all Program Administrators with access to the VISA® Information Management System. This system reports purchases at the MCC’s that the IRS has designated as “reportable” for purposes of issuing the Form 1099.

### **6.13 Emergency Purchases**

1. Unless otherwise prohibited by State Purchasing, State Entities are authorized on their own behalf to purchase in accordance with O.C.G.A., and to report such purchases to State Purchasing. Therefore, SPD approval is not required in advance of an emergency purchase.
2. Emergency circumstances exist where normal purchasing procedures cannot be utilized without extremely detrimental effects upon the operation of the State Entity and the State’s business. The purchase should be handled by the APO/CUPO using Open Market purchasing practices, as appropriate. The purchase order should provide documentation as to the circumstances surrounding

the emergency and should clearly state “emergency purchase” on the face of the purchase order (PO).

3. The APO/CUPO must provide written justification and a copy of the PO and all pertinent documentation to the SPD relating to the purchase transaction after the purchase.
4. The APO/CUPO will issue a PO to the vendor marking the PO “Emergency Purchase”.

## 6.14 Surplus Property

The APO/CUPO should determine if the item is available from various surplus property, such as property available for transfer that is not covered under Mandatory Source.

If the item is available from Surplus Services, the APO/CUPO should prepare and issue a purchase order for the specific requirements or the State Entity can make payment with a government purchase card. Purchase orders should be coded as an open market with a comment on the purchase order stating that this purchase is from a governmental source.

The buyer for the State Entity should physically inspect such items offered for transfer and, if suitable, make payment and take possession of the items at once.

NOTE: To secure an item from State or Federal Surplus Property, the APO/CUPO should refer to the following Surplus and Supply web site link.

<http://gasurplus.doas.state.ga.us/apps/gss/surplus.nsf>

## 6.15 Purchase of Used Equipment

When purchasing used equipment, the APO/CUPO should determine if the equipment is suitable for intended use and is as economical to use as new equipment. In doing so, the following requirements shall be met:

1. The APO/CUPO shall determine if any comparable specifications can be obtained.
2. The APO/CUPO shall determine if there is a market for the commodity and who can supply the commodity.
3. The APO/CUPO shall have used equipment examined by qualified personnel who will furnish a written certification as to the condition and value to the State Entity. This certification should include good working condition for intended use, price comparisons to comparable used equipment, and substantial savings versus comparable new equipment.

After reviewing the above requirement and determining that no comparable specification can be written and that there are no other vendors to supply this equipment as a used commodity, the APO/CUPO shall prepare a PO with all documentation of findings attached, process the PO as a Sole Source Procurement, and maintain a copy of the documents in the contract file. There must also be a letter

from the vendor indicating the price for the used equipment and any warranty they might offer. If the purchase exceeds the State Entity's Delegated Purchasing Authority, the APO/CUPO shall prepare the requisition for the SPD and ensure that all necessary documentation is in order. The SPD will process the requisition as a Sole Source Procurement. If the documentation is not justifiable, the SPD will process the purchase order as an Open Market procurement.

## **6.16 Agency Contract Index**

State entities are responsible for maintaining all contracts (which are one year or longer in duration) in the Agency Contract Index (ACI), which is available online at [http://ssl.doas.state.ga.us/PRsapp/PR\\_AGENCY\\_contract\\_menu.jsp](http://ssl.doas.state.ga.us/PRsapp/PR_AGENCY_contract_menu.jsp). State entities utilizing Team Georgia Marketplace™ must utilize the contract management functionality of that tool in lieu of the ACI for any and all contracts established by that state entity through Team Georgia Marketplace™.

## **Section 7: Special Approvals**

Special approval requisitions must have prior approval before the SPD can begin the purchasing process. In these instances, the APO/CUPO is advised to plan well in advance and submit required information to the appropriate special approval authority as soon as possible.

### **7.1 Office of Fleet Management Approval of Motor Vehicles**

All purchase orders for motor vehicle purchases shall be processed in the following manner:

1. The APO/CUPO shall obtain approval from DOAS Office of Fleet Management (hereinafter "OFM") to purchase vehicles.
2. If the purchase request is approved by OFM, the purchase order(s) must be forwarded to OFM for review and signature approval.
3. Once OFM has determined that the purchase order(s) is compliant, the OFM will forward the approved purchase order(s) to the APO/CUPO with authorization to release the order to the appropriate contractor.
4. If the purchase order(s) were non-compliant, OFM will deny and return the purchase order(s) to the APO/CUPO with a disposition.
5. Every transaction is independent. If DOAS OFM approves the State Entity purchase request for a particular vehicle no substitutes are allowed after the fact. The State Entity must submit a new request to the DOAS OFM if the type of vehicle is different than originally submitted.

### **7.2 Technology Products and Services**

The legislature established the Georgia Technology Authority (GTA) in July 2000. GTA is responsible for the procurement and operation of all the information

technology (IT) and telecommunication products and services for the state of Georgia. Requests for technology procurements must be submitted to GTA for review.

### **7.3 Trade-In of Used Equipment**

1. The APO/CUPO must contact DOAS Surplus Property for approval to include the disposal of used equipment in the procurement of similar new equipment. Upon receipt of approval from Surplus Property, the State Entity may include the trade-in of used equipment in the procurement of new equipment. The APO/CUPO should follow normal procurement procedures.
2. The APO/CUPO should list the used equipment and provide detailed information of the equipment, including but not limited to make, model, age, condition, serial number and location. The equipment may be offered for public inspection during the procurement process.
3. It is recommended that the equipment to be traded in be listed separately to allow the State Entity the option of accepting the trade-in value offered by the vendor or not.

## ***Section 8: Inspection of Plant and Audit of Records***

### **8.1 Right to Inspect Plant**

By submitting a bid or proposal to the State, the bidder/offeror agrees to permit the State the right of inspection at the bidder's/offeror's plant or warehouse. Upon request, the bidder/offeror shall provide all reasonable facilities and assistance for the safety and convenience of the State's appointed representative in the performance of such inspection.

### **8.2 Right to Examine Records**

DOAS shall have the power to examine books, records, and papers of any board, department, commission, institution, or office of the state government relative to purchases and to require those in control thereof to furnish the department with copies of any and all records pertaining thereto. At the direction of the Governor, the department shall report in such detail as may be required any purchase or purchases made by any such branch of the state government.

### **8.3 Procurement Records**

Each procurement file should be identified so it can be readily located and referenced. All purchasing transactions should be supported with appropriate documentation. The State Entity may maintain the files either in hard copy or in electronic form as long as the documentation is accessible to the team. It is important that documentation maintained in electronic form has the same level of detail that would be available in hardcopy, including authorized signatures.

## 8.4 Purchasing Process Reviews

### 1. Purpose of the Review

The SPD will conduct Purchasing Process Reviews of the purchasing practices of all State Entities that fall under the purview of the SPD. The purpose of the review is to determine if State Entities are complying with Georgia's purchasing statutes and rules, and whether they should continue to have the same level of delegation, have it reduced, or qualify for an increase.

### 2. Preparation

- a. The SPD staff may enter the premises and obtain a State Entity's purchasing records for the purpose of the Purchasing Process Review. The State Entity shall cooperate with the review staff, provide them with requested records, adequate office space for conducting the review, and ensure that State Entity purchasing staff is available for discussion of purchasing transactions. A typical review lasts three (3) days.
- b. The SPD purchasing staff will send an Engagement Letter to the State Entity at least thirty (30) days prior to the review. The SPD will also send an Internal Controls Questionnaire; Engagement Outline; and a Purchasing Staff Survey form which must be returned to the SPD within 14 calendar days after receipt. The SPD will request the State Entity to submit a copy of the State Entity's Internal Policies and Procedures Manual, and a Purchasing Card Manual within 14 days prior to the review.

### 3. Entrance Conference

Upon arrival, the review team will conduct an interview with the APO/CUPO. The In Charge Auditor will ask questions pertaining to the internal controls of the State Entity.

### 4. Field Work

The SPD team will review the following:

- a. Administrative Controls
- b. Competitive Purchases
- c. State Entity Contracts
- d. Statewide Contracts
- e. Mandatory Sources
- f. Purchasing Card

### 5. Exit Conference

The review team will conduct an exit conference with the APO/CUPO. During the conference the In Charge Auditor will discuss the findings and will highlight areas of non-compliance as well as recommendations for corrective action. The team will prepare a draft report and will provide the State Entity with a copy within two (2) weeks following the review. The State Entity will be given thirty

(30) days to respond to the team findings. The response should contain supporting documentation and any corrective action that the State Entity is planning to take in accordance with the review team's recommendations.

6. Finalizing the Report

The SPD will take the State Entity's response into consideration before providing the final report. The report will be provided to the State Entity Head with a copy to the APO/CUPO, SPD, Department of Audits, and the Board of Regents as appropriate.

7. Impact

The results of the Purchasing Process Review will be taken into consideration by the SPD in reviewing the appropriateness the State Entity's Delegated Purchasing Authority dollar threshold.

## 8.5 Desk Audits

The SPD will conduct desk audits of State Entity procurement operations. These audits will be conducted using the state's financial system.

1. Audit Process

The review team will conduct electronic sampling of the State Entity's purchase orders to determine compliance with the GPM. The review may include but is not limited to the following:

- a. Evidence that the bid evaluation was completed and that award was based on the lowest responsive/responsible bidder; documentation regarding any rejected bids.
- b. Competitive bidding process over \$5,000.00
- c. Multiple purchases
- d. Number of bids solicited
- e. Delegated Purchasing Authority
- f. Signatures on purchase orders
- g. Mandatory source requirements
- h. Correct use of sole source and sole brand procedures
- i. Correct use of statewide and State Entity contracts
- j. Approvals
- k. Delivery and payment terms
- l. Purchase Order Types
- m. Purchase Coding
- n. Posting to the Georgia Procurement Registry

2. Purchasing Process Review Report

The review team will conduct a telephonic exit briefing with the APO/CUPO. The State Entity will be provided with a draft report and will be given an opportunity to respond. The State Entity's response will be taken into consideration and will be incorporated into the final report. The time frame for finalizing the report is the same as on-site reviews. The distribution is the same as with on-site reviews.

## **Section 9: Determinations and Reports**

### **9.1 Finality of Determinations**

The determinations required by the following are final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law: Competitive Sealed Bidding, Correction or Withdrawals of Bids made by Issuing Officer, Cancellation Awards, Competitive Sealed Proposals, Contract Extensions and Renewals, Award, Sole Source Procurement, Emergency Procurements, Special Procurements, Responsibility of Bidders and Offerors, Determinations of Non-responsibility, Types of Contracts, and Multi-Year Contracts.

### **9.2 Reporting of Anti-Competitive Practices**

When for any reason collusion or other Anti-Competitive practices are suspected among any bidders or offerors, a notice of relevant facts shall be submitted to the Attorney General.

### **9.3 Retention of Procurement Records**

[The Georgia State Records Management Program](#) provides guidelines and standards to state and local government State Entities.

#### **1. Duty of State Entities**

Each State Entity is responsible for establishing its retention schedule. State Entities may retain records in an electronic format as long as the records contain the same information in the electronic format that is contained in the hard copy of the record.

#### **2. Retention Schedule in the SPD**

- a. The SPD retention schedule for State Entity contract and RFP files requires retention for six (6) years following the cutoff when the contract becomes inactive upon expiration of contract. Files should be pulled and transferred at the end of the fiscal year.
- b. The SPD retention schedule for construction files has a statute of limitations of six (6) years. Upon expiration of a construction file, it is designated inactive and the cutoff date is at the end of that fiscal year. This inactive file should remain in the current files for one additional year and afterward should be transferred to archives and held for five (5) years, then destroyed.



- c. The SPD retention schedule for Statewide Contract files has a statute of limitation of six (6) years. Upon expiration of the contract, transfer to inactive file. Cut off the inactive file at the end of each fiscal year, then hold in current file area one (1) year, then transfer to State Records Center, hold five (5) years; then destroy.
- d. The SPD retention Schedule for Open Market Purchases has a statute of limitations of five (5) years. These records are microfilmed and then held in the current file area for nine (9) months and then destroyed. The microfilm negative is maintained in-house for five (5) years or until no longer needed for reference, then destroyed. The duplicate negative is transferred to the State Records Center for security storage and is held for five (5) years and then destroyed.

## Chapter 4: Specifications

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### Section 1: Specifications

DOAS has the authority to establish standard specifications for purchases of the State of Georgia for all supplies, materials, and equipment purchased or to be purchased for the use of the state government for any of its departments, institutions, or State Entities. The APO/CUPO should assist the end-users in the preparations of specifications.

Preparing specifications involves three major considerations which include: design consideration of function; manufacturing considerations of economical production; and procurement considerations of markets, materials availability, supplier capabilities, and cost. The function of an effective specification should be to identify minimum requirements, allow for a competitive bid, list reproducible test methods to be used in testing for compliance with specifications, and provide for an equitable award at the lowest possible cost.

There are many available sources that can be of assistance in specification preparation, such as: state, local and Federal governmental State Entities; manufacturer and distributor sales, literature and company web sites; the National Institute of Governmental Purchasing and Technical Information Exchange program; Association of users, manufacturers and technical societies; and staff personnel. The State cannot accept or award bids for a solicitation from vendors who received compensation from the State Entity to participate in the preparation of specifications for which the solicitation is based.

#### 1.1 Performance Specifications

Performance specifications are based on the expected result, or performance, of a product or service. The technical specifications describe the functional requirements of the user. Neither the manufacturing process nor product composition is specified, but is left to the bidder to decide the best way to meet or exceed the requirements.

This type of specification assures compliance of requirements and, in case of failure, the responsibility lies with the contractor. In addition, it assures inclusion of all applicable new product developments.

#### 1.2 Design Specifications

Design specifications rely on how a product is made rather than what it does. Design specifications frequently use physical dimensions to describe the product. When at all possible, group terms (such as type, grade, class, and composition) should be used to designate items, and if further clarification is needed, then specify classifications (such as style, color, form, weight, and size) suitable for reference. Design specifications tend to restrict competition and, in cases of failure, the responsibility lies with the buyer. In addition, the cost of inspection to assure compliance with the design requirements may be costly.

### 1.3 Combination of Performance and Design Specifications

The combination of performance and design specifications effectively utilizes characteristics of both major specification types as prerequisites and as limiting factors in development. Other qualifiers which may be included in specifications are Brand or Trade Name, Qualified Products List (QPL), samples, and bidder's response form.

### 1.4 Alternative Specifications

#### 1. Brand or Trade Name

A brand name and model number designates a specific product of a manufacturer as an example of the quality level of materials and workmanship desired. Items equaling or surpassing this quality level are understood to be acceptable.

Therefore, the specification should always be stated "approved equal" to indicate that items equivalent in quality to the specified brand names will be acceptable.

When used, brand name specifications should indicate that the brand is used merely as a reference and not as a statement of a preference for the specific product cited. If possible, more than one brand name may be used which are acceptable and meet specifications. In addition, brand names used should be known throughout the industry or have specifications that are readily available. The specification must name the salient characteristics which are to be used in comparing brands and determining the award, but also must clearly state that these factors are not the total consideration. This is accomplished by determining the minimum acceptable requirement levels or tolerances for the following: significant features, performance, quality, service availability, and compatibility. Use of manufacturer's descriptive literature (cut sheets) is NOT ACCEPTABLE.

#### 2. Qualified Products Lists (QPLs)

Qualified Products Lists (QPLs) are a list of products maintained by a State Entity that meets established specifications. Manufacturers submit products for comparison and/or testing to the established specification. If the product meets the specification criteria, the product and model number are approved for the list.

When the Request for Quote is issued, only those products listed on the QPL are considered for award. An Approved Brands List (ABL) is a form of QPL in that a list is maintained and it functions much the same way as a QPL. An example of an approved brands list is the statewide contract for office furniture.

#### 3. Samples

Samples may be required to be submitted with a bid for comparison and testing in order to ensure compliance with a general or detailed specification. Sample comparison and testing have been useful for such items as waxes and floor finishes, paints, disinfectants and germicides, file cabinets, tires, cleaning agents, classroom furniture, printing forms, and art materials. The samples unidentified by manufacturer are subjected to various kinds of comparisons, ranging from visual inspection and evaluation to chemical and physical laboratory tests to in-use applications. Data and relative performance results must be documented, and

determinations made of the best value. Samples may also be of great value in ensuring compliance and satisfaction after award, before production, where final award of a contract is contingent upon a satisfactory pilot model or prototype. All samples must be maintained for ninety (90) days and awarded sample must be maintained for life of the contract.

#### 4. Bidder's Response Forms

Bidder's response forms provide bidders an opportunity to respond to individual requirements. Supporting data must be submitted along with the Bidder's Response Form, such as vendor catalog pages and product specification sheets.

## Chapter 5: Construction

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### Section 1: Contracting for Construction

For the purposes of this manual, construction or “public works” contract includes contracts for design, engineering, construction, alteration, modification, demolition, maintenance and repair, as well as consultant contracts relative to such activities. Public works contracts also include all public contracts that are covered by the statutory requirements for a payment or performance bond. As a general rule, if the contract is to be performed on public property and involves a fixed asset, the contract is a public works contract.

This section outlines general policies for contracting for construction. Notwithstanding anything to the contrary in this manual, the State Entity, at its discretion, may conduct public openings in which members of the public are permitted to be present on the date and time the bids are due at a location identified by the State Entity to listen to the State Entity’s reading of the names of the vendors submitting bids as well as the pricing submitted by those vendors.

1. The user determines and transmits to the APO/CUPO the unit’s construction requirements.
2. The APO/CUPO determines the user’s exact need regarding specifications, conditions and schedule requirements.
3. The APO/CUPO selects the Design Professional (Architect or Engineer) to prepare required drawings and specifications for the project. Such drawings and specifications should be prepared by qualified State Entity personnel according to the proposed project, the State Entity’s program, the availability of personnel and Georgia law.
4. The APO/CUPO coordinates the technical conditions, specifications and required drawings of the construction project with the State Entity personnel designated in 1.3 above. This will include preparation of the complete bid package including all prints, general and technical specifications, and the standard terms and conditions for construction projects. A project manual with Standard Terms and Conditions has been developed, and must be included with all construction projects.
5. The APO/CUPO prepares a requisition and secures all necessary approvals and clearances.
6. The APO/CUPO processes the requisition and ensures that it includes the following:
  - a. The project description and location. These must read as it appears in the specifications and plans since this is the description that will appear in the contract and on all required bonding documents.

- b. The name(s) and address(es) of person(s) who will be responsible for distribution of plans and specifications to contractors requesting copies. The name(s) will appear in the RFQ and in the legal advertisement.
  - c. The amount of deposit required for obtaining a copy of plans and specifications.
  - d. Name(s) and address(es) of State Entity personnel to receive correspondence (for example, copy of RFQ, bonds for approval and completed contracts packages) sent or forwarded from the SPD.
  - e. Name and title of the person in the State Entity who will be responsible for signing the contract.
7. The APO/CUPO submits the requisition with one copy of the plans and Project Manual to the appropriate SPD. For projects over \$100,000.00, upon receipt of the requisition, the APO/CUPO or the SPD will:
- a. Review the submitted bid package for general adequacy for the intended purpose.
  - b. Coordinate changes required, if any, with specified State Entity personnel to ensure that competitive bids can be obtained.
  - c. Upon determination that bid package is suitable for intended purpose prepares a Request for Quote with required information for suitable vendors/contractors.
  - d. Establish time and date for opening of bids and notify State Entity designee of same.
  - e. Prepare legal advertisement and post the bid opportunity on the Georgia Procurement Registry.
8. The designated party must distribute plans, specifications, project manuals, and all addenda to vendors, contracting firms and others. A deposit may be required from those who order such documents.
9. The designated party must maintain accurate records of firms, addresses (postal and e-mail), and telephone numbers of parties receiving copies of plans, specifications, project manuals, and all addenda and provide a copy of the completed list to the SPD prior to the bid closing date.
10. The APO/CUPO provides a copy of all addenda issued to the SPD, prior to the "Bid Closing Date/Time."
11. The bid officer opens and reads in public on the date and hour stipulated in the RFQ. The APO/CUPO and design professionals are invited to attend bid openings.
12. For bids \$100,000.00 and over the SPD tabulates bids and forwards recommendations for award to the APO/CUPO.
13. Evaluation and recommendation:

- a. The State Entity accepts the bid. If alternates are a part of the bid, the notice of acceptance must show the alternates to be exercised and the amount of each alternate along with the total amount of the contract.
  - b. If the State Entity wishes to reject all bids, list the reason(s) for rejection and whether re-bidding is desired.
  - c. For projects \$100,000.00 and over, the APO/CUPO will transmit to the SPD notification of this decision.
14. Upon preparation of the Notice of Award by the SPD, the APO/CUPO will prepare proper contract documents and send to accepted bidder with complete instructions for the preparation and submission of all required contract documents.
  15. Upon receipt of completed documents from the bidder, the APO/CUPO will check for completeness, correctness and compliance with all requirements of the bidding documents (including the submission of Performance and Payment Bond) and Georgia Law.
  16. The APO/CUPO must have all copies of the contract signed by the appropriate person and forward one copy to the accepted contractor. For projects \$100,000.00 and over, the APO/CUPO must forward one copy (along with a copy of the bonds) to the SPD and one copy of contract and purchase order to the accepted contractor.
  17. The State Entity is responsible for administering and monitoring the project through the entire construction phase.
  18. For projects awarded by the SPD, the APO/CUPO must submit for approval copies of all change orders, prior to issuance to the SPD. The SPD will promptly approve all properly drawn and validated change orders that are within the statutory limitations.
  19. The SPD will assist the State Entity, upon request, in clearing up problems that may arise during the construction phase. (See Contract, Performance, and Administration.)
  20. The APO/CUPO will provide written notice to the SPD upon contract completion and final acceptance of the project. The SPD will, upon receipt of notice of completion and acceptance, close the active file.

## **Section 2: Bonds and Insurance**

### **2.1 Bid Security**

1. If bid bonds are required, all bidders must submit a bid bond with the bid. Bid security shall be required for all competitive sealed bidding for construction contracts when the project is estimated by the APO/CUPO to be \$100,000.00 or more. The bid security shall be a bond provided by a surety company authorized

to do business in the State of Georgia. The State may waive the requirement of such bonds on construction contracts under \$100,000.00.

2. The amount of security shall be an amount specified in the solicitation.
3. When the RFQ requires bid security, noncompliant bids will be rejected.
4. After bids are opened, bonds shall be irrevocable for the period specified in the Request for Quote. If a bidder is permitted to withdraw the bid before award, or is excluded from competition before award, no action shall be taken against the bidder or the bid bond.

## **2.2 Contract Performance and Payment Bonds**

When a construction contract is awarded and bonds are required, the following bonds shall be delivered to the State and shall become binding on the parties upon the execution of the contract:

1. A Performance Bond satisfactory to the State, executed by a surety company authorized to do business in the State of Georgia or otherwise secured in a manner satisfactory to the State, in an amount equal to one hundred percent (100%) of the contract price.
2. A Payment Bond satisfactory to the State, executed by a surety company authorized to do business in the State of Georgia or otherwise secured in a manner satisfactory to the State, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the construction work provided for in the contract. The bond shall be in an amount equal to one hundred percent (100%) of the contract price.

## **2.3 Insurance and Indemnification**

1. The contractor is also responsible for indemnifying the owner for all the contractor's agents, employees, or subcontractors.
2. The contractor shall not commence work until proof of insurance has been provided at the limits specified in the contract.
3. The contract shall identify and hold harmless the owner from and against any claims of liability to a third party for any loss due to injury or damage arising out of or resulting from the performance.

## **Section 3: Change Orders**

Change orders are defined as any administrative change, scope of work change, specifications change, quantity and/or dollar value change.

The following procedures should be followed:

1. The APO/CUPO shall complete a Change Order Form and attach all appropriate documentation supporting the request.



2. If the Purchase Order was issued from a solicitation conducted by the SPD, the completed Change Order Form and all appropriate documentation must be forwarded to the SPD for approval. After approval, the SPD will forward written approval to proceed, along with the change order, to the APO/CUPO.
3. The APO/CUPO must sign the Change Order. The change is issued to the contractor and the APO/CUPO sends a copy to the SPD.
4. The APO/CUPO will maintain a copy of the executed change order form, along with supporting documentation, in the bid file.

If the purchase order was issued by result of a solicitation conducted by the SPD, the APO/CUPO must forward a copy of the executed change order form, along with supporting documentation, to the SPD.

## **Chapter 6: Contract Administration**

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### ***Section 1: State Entity Responsibilities***

The goal of contract administration is to ensure that the contract is performed by the contractor and the responsibilities of both parties are properly discharged. It is the responsibility of the State Entity staff to oversee, monitor, and provide technical guidance to contractors performing under a contract.

The APO/CUPO/designee is responsible for managing the contract after contract award. All direction to a contractor must be within the scope of the contract. State Entity personnel must not impose additional requirements upon the contractor or make changes that are out of scope of the contract. In addition to the guidelines contained in the GPM, the APO/CUPO should refer to the Contract Administration Guide for additional guidance.

### ***Section 2: Functions of the Contract Administrator***

1. The Contract Administrator has key responsibilities related to the contract. The first and foremost responsibility is to provide both technical oversight and direction. It is also the role of the Contract Administrator to review all work that has been or is being performed by the contractor, confirm that the work being performed is in accordance with the specifications and provisions of the contract, and address any performance deficiencies. The Contract Administrator is responsible for monitoring the progress of the contract and may perform inspections.
2. In addition, whenever the contract so prescribes, the Contract Administrator is responsible for acceptance of the work product or service provided. If changes need to be made to the contract in the form of modifications, terminations or claims disposition, the Contract Administrator manages this process. The Contract Administrator should document all actions taken regarding the contract and then maintain the original documentation concerning such actions in the official contract file. The Contract Administrator is responsible for reviewing and approving invoices submitted by the contractor, and for monitoring their payment for timeliness and accuracy.
3. It is the role of the Contract Administrator to renew the contract at the predetermined interval (usually on an annual basis) until the contract expires or is terminated. At the end of the process, it is the responsibility of the Contract Administrator to close out the contract file.

## **Section 3: Contract Management**

### **3.1 Kickoff Meeting**

1. A Kickoff meeting (also known as a post-award meeting) is a conference of the principals responsible for administering the contract held immediately upon award of a contract. It is an orientation for the contractor to ensure a clear and mutual understanding of all contract terms and conditions and the respective responsibilities of the parties. It is an excellent tool to clarify and resolve any potential misunderstandings. Although both the contractor and State Entity personnel should be fully aware of the requirements of the contract at the time of award, the Kickoff meeting ensures that those involved directly in the contract administration process understand all requirements of contract performance. The meeting should be held within five (5) working days after contract award but no later than 12 days after contract award. The issuing officer should establish the time and place of the meeting, prepare an agenda, and notify all appropriate personnel.
2. State Entity personnel should conduct a preliminary conference to properly plan for the kickoff meeting. The kickoff meeting should cover the following areas:
  - a. Scope of the contract, for example, specifically, what the State Entity is buying.
  - b. Contract terms and conditions, particularly any special contract provisions.
  - c. Technical and reporting requirements of the contract. Reporting requirements are a means to keep the State Entity informed regarding contract status and verify that the contractor's progress coincides with contract requirements.
  - d. Applicable contract administration procedures, including contract monitoring and progress measurement.
  - e. The rights and obligations of both parties and the contractor performance evaluation procedures.
  - f. Potential contract problem areas and their possible solutions.
  - g. Invoicing requirements and payment procedures. This is important if payment will be made according to milestones achieved by the contractor.
  - h. Liquidated damages and Performance Bonds must be discussed with the contractor and conditions for enforcement explained.
  - i. State Entity personnel must explain the limits of their authority, and obtain the same information regarding contractor personnel.
3. After the Kickoff meeting, the Contract Specialist must prepare a memorandum for the file detailing the items covered. It must include areas requiring resolution, a list of participants, and, in particular, those individuals assigned responsibilities for further action and the due dates for those actions. Copies of the memorandum should be distributed to all participants.

### 3.2 Contract Administration Plan

The objective of a Contract Administration Plan (CAP) is to ensure that all State Entity personnel have a common understanding of both the contractor's and customer's respective obligations. It is a cursory view of planned and completed activities, and can be utilized throughout the term of the contract as a status report. Among the items that to be included in the CAP are:

1. Statement of Work, Identification of all deliverables, milestones and due dates.
2. List of all contract modifications/amendments issued.
3. Summary of all invoices submitted and paid.
4. List of all option/renewal dates and option/renewal notification dates.
5. Contract Milestones are for service type contracts and also some production contracts, the contract may require the contractor to achieve certain milestones or events at stated intervals. The contract may or may not provide for payment to the contractor upon the timely achievement of the milestones. Contractor achievement of milestones may be inspected for the purposes of invoice approval or performance monitoring.
6. Performance monitoring is to ensure that the contractor is performing his duties in accordance with the contract and to determine whether any problems are developing that need to be addressed.
7. Submit periodic progress reports. Comparing these reports with the contract schedule shows whether or not the contractor is making progress in accordance with the terms of the contract.
8. List of the resources which the contractor applies to the work required. Such resources should be utilized in accordance with the proposed levels in the contract.
9. The costs incurred by the contractor must be in accordance with the contract rate schedule. Invoices must be reviewed to ensure that the contractor's billing coincides with its progress. This requires that the contractor's progress be measurable. (Costs incurred or invoices submitted, are insufficient indicators of the contractor's progress.) If the end user believes that the requested payment exceeds the contractor's progress, an explanation must be requested from the contractor prior to approval of the invoice. Payment should be withheld pending State Entity satisfaction with the contractor's progress.
10. The Contract Specialist must work with the contractor to assure the timeliness and quality of deliverables. Any delay in delivery or poor quality of products or services is an indication that the contractor may be experiencing problems. Prompt inquiry may avoid further delays or quality problems. If a contractor is late in the delivery of goods or meeting a milestone, the Contract Administrator must immediately contact the contractor to ascertain the circumstances regarding the delay. However, it is the contractor's responsibility to identify schedule or performance issues and correct deficiencies in order to get back on track.

11. Deliverables must be inspected as soon as they are received to ensure that quality deficiencies are not repeated in the next shipment. (See Delivery of Goods/Performance of Services.)
12. More complex contracts may require in-process reviews and visits. Site visits to the contractor's facility by the Contract Administration and Program Manager can be utilized to verify actual performance against scheduled or reported performance. They can also assure that the contractor is dedicating sufficient resources and appropriate personnel to the contract. Site visits also reinforce the importance of the contract to the contractor, as well as provide the opportunity to enhance communication with the contractor and follow up on any previously noted discrepancies. In-Process Reviews and audits are detailed evaluations of the contractor's performance, and are generally restricted to the most complex and critical contracts.

### **3.3 Monitoring by Outside Vendors**

In some instances the obligation of monitoring a contractor's progress is assigned to another contractor, for example, on a construction contract, the task of ensuring progress in accordance with the contract may be handled by the architectural firm that provided the plans for construction. For highly technical work, consultant subject matter experts may perform monitoring services independently or by Project Manager.

### **3.4 Delivery of Goods and/or Performance of Services**

#### **1. Inspection and Acceptance**

The products delivered by the contractor must be inspected by the Project Manager upon receipt, and either accepted or rejected. For service contracts, inspection and acceptance may be upon the completion of stated tasks or timely achievement of milestones or events. The Project Manager must immediately notify the Contract Specialist of the inspection results. Acceptance constitutes State Entity acknowledgment that the supplies or services conform to the quality and quantity requirements set forth in the contract.

#### **2. Rejection of Goods or Services**

If performance, goods or services do not meet the contract requirements, the Program Manager must identify the deficiencies and advise the contractor and the Contract Specialist, in writing, so that remedial action can be taken immediately. It is critical that all rejections be fully documented since these will be used to support any disapproval of invoices. Upon receipt of a rejection notice, the Contract Specialist must immediately contact the contractor to ascertain what corrective actions the contractor is taking to correct the deficiency and assure that future deliveries/performance meet the contract requirements. Contractors must be given prompt notice of rejection, including the reasons for rejection. If prompt notice is not given, acceptance may be implied as a matter of law. Contractors must be given an opportunity to correct or replace nonconforming goods or services when that can be accomplished within the delivery schedule. Correction

or replacement must be without additional cost to the State Entity. Additionally, contractor performance must be well documented to provide a historical record that can be used in making future contract evaluation/award decisions.

3. Acceptance of Nonconforming Goods or Services

Nonconforming goods or services may, however, be accepted by the Program Manager, when it is in the best interest of the State Entity. The Program Manager should determine whether or not such nonconformance is a one-time exception or may apply throughout the term of the contract. It is recommended that State Entity personnel should discourage the repeated tender of nonconforming goods or services. When considering whether or not to accept nonconforming goods or services, the Program Manager, with assistance from the Contract Specialist, must determine if the nonconformance adversely affects the satisfaction of a basic contract objective. When accepting nonconforming goods or services, the Program Manager must notify the Contract Specialist, and they should decide whether or not the nonconformance merits an applicable adjustment in the contract fees. The Contract Specialist will issue an appropriate modification to the contract reflecting the nonconformance, whether it is a one-time occurrence or for the entire contract period, and any applicable monetary reduction to the contract.

4. Return Items

When the items are shipped incorrectly or damaged in shipping, the APO/CUPO should obtain a return authorization number, if required by the vendor. Many suppliers require that a return authorization number is obtained prior to their acceptance of a return item. Neglecting to obtain this number when it is required may result in the package being refused and/or no credit being issued to the account.

In some cases there could be a restocking fee (usually a percentage of the purchase price). If the supplier is completely responsible for the error or the problem, the State Entity should not have to pay freight, restocking, or any other fee. If the supplier is not fully responsible for the error, then the State Entity may be required to pay the fee.

Once the supplier has been notified that an item needs to be returned and a return authorization number has been issued, a change order can then be processed and faxed or mailed to the supplier.

5. Processing Invoices

Invoices must be reviewed by both the Program Manager and Contract Specialist prior to payment.

### 3.5 Project Manager Responsibilities

The Project Manager must review each invoice to ensure that the contractor is only billing for goods or services received by the State Entity, and that the goods or services have been accepted.

### 3.6 Contract Administration Function

The contract administrator is responsible for reviewing each invoice to ensure that it is correct, that the invoice complies with the terms and conditions of the contract, and that the total payments do not exceed the contract limits. In the event the contract administrator is monitoring a statewide contract and the statewide contract includes an administrative fee, the contract administrator is responsible for reviewing the accuracy of the vendor's submitted sales reports and the vendor's compliance with the contract requirements governing the vendor's remittance of collected administrative fees to DOAS. A vendor's failure to comply with the contract requirements governing the collection and remittance of administrative fees is a material default, which, if uncured, will result in any one or more of the following consequences: termination of the statewide contract by DOAS; DOAS' recovery of interest and the costs of reprocurring the statewide contract in addition to the collection of any outstanding administrative fees; suspension by DOAS; debarment by DOAS; and any other remedies permitted by the statewide contract or at law.

### 3.7 Withholding Payments and Liquidated Damages

The Contract Specialist has the responsibility to protect the interests of the State, and under the appropriate circumstances, it may be necessary to withhold payments from contractors or invoke a liquidated damages clause if included in the contract. The liquidated damages clause may not be invoked as a penalty, punishment or for punitive purposes. The payment must reflect estimated monetary damages. Among the circumstances where it may be necessary to withhold payment are:

1. A material breach of the contract by the contractor.
2. Errors in the invoice.
3. Unsupported or undocumented costs.
4. To remedy previous overpayments on the same contract.
5. Contractor's performance is nonconforming or unacceptable.
6. Invoices for travel that are not in compliance with Georgia's Travel Regulations.

### 3.8 Change Management

Throughout the term of the contract, it may be necessary to make changes to the contract. These changes can be minor administrative changes, such as a change of address, or they can be substantial changes that affect the price and delivery. The contractor must continue performance of the contract as changed.

#### 1. Administrative Changes

These are changes that are within the scope of the contract and do not affect or alter the rights of the parties. These changes are executed via a unilateral amendment. Examples of administrative changes include:

- a. Changes in billing instructions or address

- b. Corrections of typographical errors not affecting the substance of the contract
- c. Changes as permitted by the specific contract clauses
- d. Changes in State Entity personnel assigned to the contract

## 2. Administrative Change Procedures

The need for an administrative change may be identified by either the Project Manager or the Contract Specialist. If identified by the Project Manager, he/she shall submit a request for a change order to the Contract Specialist. Upon receipt of a request for an administrative change, the Contract Specialist should verify that the rights of the parties are not affected by the change. The Contract Specialist executes the change order amendment and distributes copies to the Project Manager and the contractor. Other departments that are affected by the change should also receive copies of the amendment, for example, Accounts Payable should receive a copy if there is a change to the contractor's remittance address.

## 3. Substantive Changes

These are contractual changes that affect the rights of the parties. Such changes require bilateral amendments, which must be signed by both parties. Examples of substantive changes include:

- a. Change in the price of the contract
- b. Change in delivery schedule
- c. Change in the quantity
- d. Change of nature of deliverables, for example, the specification
- e. Change of key personnel
- f. Change of any terms and conditions
- g. An extension of the contract not previously contemplated by the contract

## 4. Substantive Change Procedures

A substantive change may be initiated by the Program Manager, Contract Specialist or the contractor. Upon receipt of a substantive change order request, the Contract Specialist must determine whether the proposed change is within the scope of the contract. This may require input from the Program Manager, and sometimes from a Legal Services Officer.

## 5. Constructive Changes

If a contractor perceives that work beyond the scope of the contract was ordered by the State Entity, the contractor may claim that the contract was "constructively" changed, and the contractor may be entitled to additional compensation for the changes. Generally, a constructive change will require a bilateral amendment. Constructive changes may occur when State Entity personnel:

- a. Provide suggestions to a contractor



- b. Provide definitions to general contract terms
  - c. Accelerate the delivery schedule
  - d. Direct the work to be performed differently
  - e. Change the sequencing of the work
  - f. Delays accepting or rejecting deliverables
  - g. Delays reviewing invoices and approving payment
  - h. Interferes with or hinders performance
  - i. Add to the scope of work
6. Dispute Resolution

The goal of the resolution process is to resolve all problems before they escalate to the next level. To avoid escalation and assure the State Entity has not exacerbated potential problems, it is imperative that State Entity personnel respond promptly to all contractor inquiries. Initial steps to be taken are:

- a. Identify the problem – Frequently, what may appear to be a problem can be resolved by providing the contractor with information or clarification.
- b. Research facts – The Contract Specialist should obtain all the information regarding the potential problem from all relevant sources, including the project manager and the contractor.
- c. Evaluation – The Contract Specialist should review all the facts in conjunction with the requirements and terms and conditions of the contract. The Contract Specialist should then confer with the Program Manager (and management and budget, if necessary) to determine the appropriate course of action.
- d. Proper dispute resolution is a core skill of successful Program Management. It is essential to identify problems early in the performance period, use effective communication, and formalize the process in writing via cure notice procedure or less formal written procedure.

### 3.9 Termination

When a contract is terminated, the parties are relieved from all further unperformed obligations in accordance with the agreed terms and conditions. A contract may be terminated for default.

#### 1. Termination for Convenience

A termination for convenience (no-fault termination) allows the State Entity to terminate any contract, in whole or in part, at any time at its sole discretion, if it is determined that such termination is in the best interest of the State.

- a. The State Entity shall provide the contractor with a written notice specifying the extent (full or partial) of termination and the effective date. The State Entity should attempt to provide the contractor with as much notice as possible.

- b. The notice of termination should instruct the contractor to cease all work as of the effective date and to notify all subcontractors of the termination.
- c. The termination notice must be issued as a Notice of Award/Amendment. Following is a sample wording of the termination notice:

“Pursuant to clause No. \_\_\_, Termination, this contract is hereby terminated immediately. You are directed to immediately stop all work, terminate subcontracts, and place no further orders.

In accordance with this Notice of Termination, you shall:

- 1) Keep adequate records of your compliance with this notice, including the extent of completion on the date of this Termination;
  - 2) Immediately notify all subcontractors and suppliers, if any, of this Notice of Termination;
  - 3) Notify the (State Entity) Contract Specialist, (Name), of any and all matters that may be adversely affected by this Termination; and
  - 4) Take any other action required by the (State Entity) Contract Specialist to expedite this Termination.”
- d. The contractor will generally be paid for allowable costs incurred up to the termination. The State Entity will not be liable for payment to the contractor related to the terminated portion of the work or any work performed or costs incurred after the effective date of the termination.
    - 1) Upon receipt of any invoice from the contractor for work performed prior to the Notice of Termination, the Program Manager and Contract Specialist must thoroughly review the invoice to assure that no excessive costs are included.
    - 2) Once the Program Manager and Contract Specialist agree on an amount due the contractor, the Contract Specialist must inform the contractor. If the contractor disagrees with the State Entity’s determination, the Contract Specialist should attempt to negotiate a settlement. If no agreement can be reached, the Contract Specialist must make a determination of a fair and reasonable price. The Contract Specialist should then issue another Notice of Award/Amendment to reflect the new contract price.
2. Termination for Default

A contract may be terminated for default when the State Entity concludes that the contractor fails to perform, make progress, or in any way breached the contract. It should be noted that the State Entity is not required to terminate a contract even though the circumstances permit such action. The State Entity may determine that it is in its best interest to pursue other alternatives, for example, extending the delivery/completion date and allowing the contractor to continue working, or working with the contractor’s surety to complete the outstanding work. It must be remembered that termination for default should be used as a last resort and not as

punishment. The purpose of a termination for default is essentially to protect the interests of the State Entity while obtaining the necessary goods or services.

Factors to consider prior to the termination for default decision:

- a. Has the State Entity done everything within its power to assist the contractor in curing any default?
- b. The specific contractual failure(s) and the reasons/excuses for the failures.
- c. The urgency of the need for the contracted supplies or services. The State Entity may need to weigh the respective benefits/disadvantages of allowing a delinquent contractor to continue performance and re-soliciting a new contractor.
- d. The availability of the supplies or services from other sources, and the time required to obtain them (compared with the additional time the current contractor needed to complete the contract).
- e. Availability of funds for costs to repurchase in the event such costs cannot be recovered from the delinquent contractor. Under a termination for default, the State Entity is within its rights to demand re-procurement costs from the defaulting contractor. Nevertheless, the contractor may not be financially capable of financing the repurchase, or such demand may result in protracted legal action.

### 3. Excusable Causes

A contract may not be terminated for default when the failure to perform is due to excusable causes. In order to qualify as an excusable cause, the cause must be beyond the control, and without the fault or negligence, of the contractor. Such causes include, but are not limited to: (1) acts of God or of the public enemy, (2) fires, (3) floods, (4) epidemics, (5) strikes, (6) freight embargoes, and (7) unusually severe weather. If a contractor's failure to perform is due to the default of a subcontractor, in order to qualify as an excusable cause, the default must arise out of causes beyond the control and without the fault or negligence of both the contractor and subcontractor. Even if this requirement is met, the cause will not be excusable if the supplies or services to be provided by the subcontractor could have been obtained from other sources in time to meet the contract delivery schedule.

### 4. Procedures

Prior to terminating a contract for default a delinquency notice must be sent to the contractor. These notices are generally sent with proof of delivery requested.

#### a. Cure Notice

When it has been determined that a termination for default is warranted, the Contract Specialist must notify the contractor in writing and allow a reasonable period, usually ten (10) days, to correct or cure the deficiency or violation. This notice is commonly known as a "Cure Notice." The format for a Cure Notice may be as follows:

“You are notified that the [State Entity] considers [specify failure(s)] a condition that is endangering performance of the contract. Therefore, unless this condition is cured within ten (10) days after receipt of this notice, the [State Entity] may terminate for default under the terms and conditions of the Termination clause of this contract.”

b. Show Cause Notice

If the time remaining in the contract delivery schedule is not sufficient to permit a realistic “cure” period of ten (10) days or more, a Show Cause Notice can be used. It may also be used as a final warning to the contractor if the contractor has failed to adequately respond to a Cure Notice.

The format for a Show Cause may be as follows:

“Since you have failed to perform Contract No. \_\_\_\_\_ within the time required by its terms [or cure the conditions endangering performance under Contract No. \_\_\_\_\_ as described to you in the (State Entity’s) letter of \_\_\_\_\_], the [State Entity] is considering terminating the contract under the provisions for default of this contract. Pending a final decision in this matter, it will be necessary to determine whether your failure to perform arose from causes beyond your control and without fault or negligence on your part. Accordingly, you are given the opportunity to present, in writing, any facts bearing on the question to [name and address of Contract Specialist] within ten (10) days after receipt of this notice. Your failure to present any excuses within this time may be considered as an admission that none exist.

Any assistance given to you on this contract or any acceptance by the [State Entity] of delinquent goods or services will be solely for the purpose of mitigating damages, and it is not the intention of the [State Entity] to condone any delinquency or to waive any rights the [State Entity] has under the contract.”

c. Notice of Termination

If the contractor fails to cure the situation or provide a satisfactory explanation as requested in the Show Cause Notice, the contract may be terminated. The Notice of Termination should contain the following:

- 1) The contract number and date of contract
- 2) The effective date of the termination
- 3) Reference to the clause under which the contract is being terminated
- 4) A concise, accurate statement of the facts justifying the termination
- 5) A statement that the supplies or services being terminated may be re-procured and that the contractor will be held liable for any excess repurchasing costs.

## **Section 4: Contract Closeout**

The purpose of the closeout process is to verify that both parties to the contract have fulfilled their contractual obligations and that there are no responsibilities remaining.

A contract is completed when all goods or services have been received and accepted; all reports have been delivered and accepted; all administrative actions have been accomplished; all State Entity-furnished equipment and material has been returned; and final payment has been made to the contractor.

### **4.1 The Closeout Process**

To begin the closeout process, the Contract Specialist should first determine that the contractor has satisfactorily performed all required contractual obligations. A contract is ready for closeout when:

1. All deliverables including reports have been delivered and accepted by the State Entity.
2. Final payment has been made.
3. All State Entity property (if applicable) has been returned.
4. Approval from the Program Manager (if applicable) has been received.
5. All issues have been resolved.

### **4.2 Responsibilities**

The Contract Specialist is primarily responsible for contract closeout and must:

1. Determine whether all payments to the contractor have been made.
2. Determine whether all administrative actions have been completed.
3. Ensure that all issues have been resolved.
4. Ensure that the official contract file contains all necessary documentation. The Program Manager must
  - a. Determine whether all deliverables, including reports, have been delivered and accepted.
  - b. Determine whether all State Entity property, if any, has been returned.
  - c. File a contractor performance evaluation with the Contract Specialist.
  - d. Provide the Contract Specialist with the appropriate material from the Program Manager's file for inclusion in the official contract file.

## **Section 5: Vendor/Contractor Performance**

### **5.1 Contractor Performance**

The APO/CUPO shall prepare a contract assessment form on every contract at the end of the contract. This form must be completed and submitted to the SPD prior to the extension or renewal of the contract. The APO/CUPO should use information contained in contractor's performance evaluation form to prepare the contract assessment.

### **5.2 Complaints against Vendor/Contractors**

A contract is awarded with the expectation that both the contractor and the State of Georgia have entered into the agreement in good faith, and that both parties will perform their respective duties and obligations in accordance with the contract specifications, terms and conditions and at the quoted price. Occasionally, situations arise when the contractor does not perform and the State Entity may suffer damages as a result. Typical non-performance issues include, but are not limited to:

1. Missing a scheduled delivery date and time
2. Providing items that are not a part of the contract
3. Providing inferior merchandise
4. Unauthorized substitutions
5. Alteration of the contract pricing
6. Damaged shipments
7. Unauthorized use of subcontractors unauthorized assignment of the contract to another contractor
8. Inadequate staffing levels
9. Unqualified workers
10. Late or failed delivery
11. Late worker arrivals or no-shows

If the APO/CUPO has a complaint against a vendor or a contractor, the APO/CUPO should make an effort to resolve the problem with the contractor informally.

The state has several remedies available to resolve non-performance issues with the contractor. The State Entity should refer to the Contract Terms and Conditions to view these remedies. The SPD, however, may not usually exercise these remedies until/unless the contractor has been provided with an opportunity to cure the deficiency. When a default occurs, the State Entity should first review the contract to confirm that the issue is a part of the contract. If the issue is not covered by the contract, the state cannot expect the contractor to perform outside the agreement. If the issue is a part of the contract, the State Entity must then contact the contractor, discuss the reasons surrounding the default and establish a date when the contractor will resolve the non-performance issue. If the State Entity's efforts fail to resolve the

issues, the State Entity should then notify DOAS. The mechanism to notify DOAS is the Complaint to Vendor (CTV) form.

### **5.3 Failure to Satisfactorily Respond to the Complaint**

In the event that a contractor fails to respond to the complaint, the APO/CUPO shall take this factor into consideration in determining the contractor's eligibility for future contracts. The seriousness of the complaint is determined by the State Purchasing Division and recorded in the contractor's history file. Repeated complaints could result in suspension and/or debarment.

In the event of default by the contractor for failure to deliver, failure to meet specifications, or for any other reason, the State of Georgia may, in addition to any other remedies which it may have by law, in equity, or which may be provided for in its contract, procure the subject items or services from other sources and hold the contractor responsible for any additional cost which is incurred as a result. Default on contracts may result in suspension and/or debarment.

### **5.4 The Complaint to Vendor (CTV)**

The CTV shall be used by State Entities to notify the SPD of non-performance by a contractor under a state term contract. The SPD utilizes the Complaint to Vendor form to provide a standard means for all State Entities to report contractor discrepancies or deficiencies on the part of the vendor or the products furnished which do not meet the standards and specifications of the purchase order. The form further provides a means by which the SPD may obtain factual reports relative to the performance of a vendor to furnish supplies, equipment, material and/or services to the State. A copy of each report issued to a vendor shall be mailed to the SPD. The CTV may be used by the State in evaluation of the contractor on future bids. If the SPD determines that past performance of the contractor is unacceptable, the SPD may disqualify the contractor and deny future awards. Therefore, it is very important that the State Entity provide complete and accurate details.

Upon receipt at the SPD, the CTV will be logged in by the SPD Vendor Certification Officer (VCO). The APO/CUPO shall notify the SPD if the complaint has been resolved.

## **Section 6: Contract Clauses**

### **6.1 Contract Clauses**

1. The SPDAC may permit or require the inclusion of clauses providing for appropriate remedies, adjustments in prices, time of performance, or other contract provisions.
2. The SPDAC may modify clauses for inclusion in any particular state contract, provided that any notice of any material variations is stated in the solicitation.

3. All contract clauses shall be consistent with the provisions of this Article and the regulations issued pursuant to this part.
4. See the Appendix for sample contract clauses that may be added to the Standard State Entity Agreement. The APO/CUPO should contact the SPD if developing a contract for an RFP.

## **6.2 Standard Terms and Conditions**

State Entities that have been delegated procurement authority by the SPDAC shall use in contracts for commodities and services standard terms and conditions clauses that have been approved by the SPDAC.



## **Chapter 7: Cost Principles**

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### ***Section 1: ---- Reserved ----***

## **Chapter 8: Fleet Management**

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### ***Section 1: ---- Reserved ----***

## Chapter 9: Legal and Contractual Remedies

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### Section 1: Protest Process

#### Section 1: Protest Process

##### 1.1 Protests

A vendor may file a written protest challenging a state entity's compliance with applicable procurement procedures subject to the vendor's compliance with the following provisions. Any such written protest will be resolved in accordance with the following provisions.

##### 1.2 Types of Challenges

Any aggrieved vendor interested in and capable of responding to a competitive solicitation may file a protest with respect to the competitive solicitation process, including but not limited to a challenge to specifications or any events or facts arising during the solicitation process. Any aggrieved vendor interested in and capable of providing the goods/services identified in a sole source notice may file a protest challenging the sole source determination. Any aggrieved vendor submitting a timely bid/proposal in response to a competitive solicitation may file a protest with respect to the state entity's intended or actual contract award, including but not limited to events or facts arising during the evaluation and/or negotiation process.

##### 1.3 Form of Protest

At a minimum, the written protest must include the following:

1. the name and address of the protestor;
2. appropriate identification of the solicitation/sole source notice;
3. a statement of reasons for the protest;
4. supporting exhibits, evidence or documents to substantiate any claims unless not available within the filing time (in which case the vendor must proceed to file the protest when the filing period identified below but state the expected availability of the material); and
5. the desired remedy.

The State, at its discretion, may deem issues not raised in the initial protest as waived with prejudice by the protesting vendor.

##### 1.4 Filing Protests

A protest is considered to be properly filed when it is in writing, signed by a company officer authorized to sign contracts on behalf of the vendor, and is received by SPD. The protest may be sent by any of the following means:

MAIL:      Attn: Assistant Commissioner - Procurement  
                 State Purchasing Division

Department of Administrative Services  
 200 Piedmont Ave., SE, Suite 1308 West Tower  
 Atlanta, GA 30334-9010

FAX: 404-657-8444

EMAIL: [protests@doas.ga.gov](mailto:protests@doas.ga.gov)

The vendor must observe the following deadlines when filing a protest:

Type of Protest	Protest Filing Deadline
Challenge to Competitive Solicitation Process	Two (2) business days prior to the closing date and time of the solicitation as identified on the GPR or eQuote
Challenge to Sole Source Notice	Prior to the closing date and time of the Sole Source Notice as published on the GPR
Challenge to an Intended or Actual Contract Award	In the event the state entity posts a Notice of Intent to Award (NOIA), the protest must be filed within ten calendar days of the date the NOIA is posted
	In the event the state entity does not post a NOIA, the protest must be filed within ten calendar days of the date the NOA is posted

If an aggrieved vendor fails to file a protest by the applicable deadline, the State may, at its discretion, deem such failure as a waiver with prejudice of any grounds the vendor may have for protest.

### 1.5 Stay of Procurement During Protest Review

When a protest challenging the competitive solicitation process has been timely filed at least two (2) business days prior to the closing date and time, the solicitation shall not close until a final decision resolving the protest has been issued, unless the SPDAC makes a written determination that the closing of the solicitation without delay is necessary to protect the interests of the State.

When a protest challenging a sole source notice or an intended contract award has been timely filed, the state entity shall not proceed to actual contract award unless the SPDAC makes a written determination that the issuance of a contract or performance of the contract without delay is necessary to protect the interests of the State. If it is determined that it is necessary to proceed with contract performance without delay, the bidder/offeror with this contingent contract may proceed with performance and receive payment for work performed in strict accordance with the terms of the contract; however, such bidder/offer shall not be entitled to reimbursement for any capital outlay costs, or other up front expenditures incurred in performing the contract. The provisions of this paragraph are not applicable to a protest pertaining to events or facts arising during the solicitation process.

## 1.6 Protest Resolution

The SPDAC shall review and issue a written decision on the protest as expeditiously as possible after receiving all relevant requested information from the state entity and/or issuing officer. Available remedies for sustained protests are as follows:

- If a protest is sustained prior to the closing date and time of the solicitation, available remedies may include, but are not limited to, the following: modification of the solicitation document, including but not limited to specifications and terms and conditions; extension of the solicitation closing date and time (as appropriate); and cancellation of the solicitation.
- If a protest of a sole source notice is sustained, available remedies include revision or cancellation of the sole source notice.
- If a protest of the intended/actual contract award is sustained, available remedies may include, but are not limited to, the following: revision or cancellation of the NOIA/NOA, re-evaluation and re-award or re-solicitation with appropriate changes to the new solicitation.

## 1.7 Costs

In no event shall a vendor be entitled to recover any costs incurred in connection with the solicitation or protest process, including, but not limited to, the costs of preparing a bid/proposal, the costs of participating in the protest/request for formal review process or any attorneys' fees.

## 1.8 Requests for Formal Review/Appeal Process

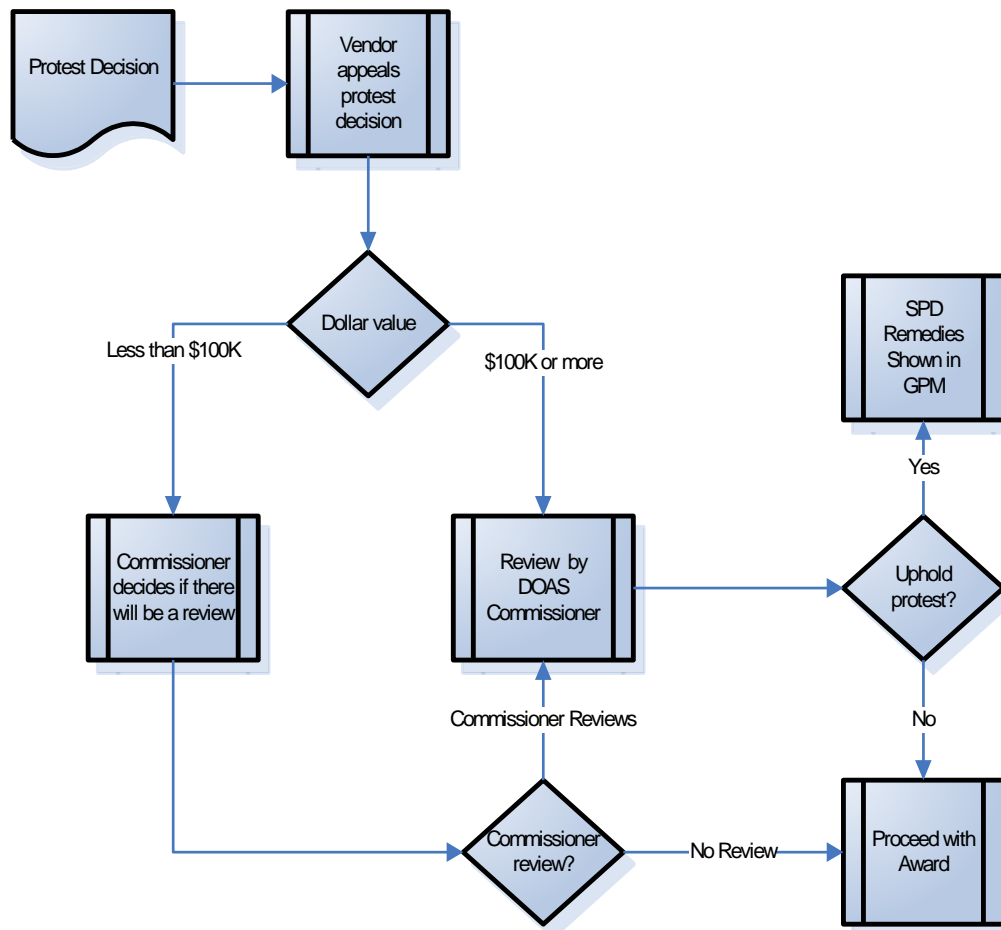
All protest decisions concerning solicitations, sole source notices, and/or intended/actual contract awards with an estimated value of \$100,000 or more shall be subject to formal review by the DOAS Commissioner upon request. In the event the estimated value of the solicitation, sole source notice, and/or intended/actual contract award is less than \$100,000, it shall be within the DOAS Commissioner's discretion whether such request for formal review will be granted. The following parties may file a request for formal review: (1) any vendor adversely impacted by the protest decision, including, but not limited to, the protesting vendor, provided the vendor is interested in and capable of providing the goods/services at issue and, in the event the underlying protest disputes an intended/actual contract award, submitted a timely bid/proposal and (2) the state entity.

Any request for formal review must be received by the DOAS Commissioner within three (3) business days of the issuance of the protest decision. The request for formal review must be in writing and shall identify any errors in the protest decision as well as the factual and legal grounds upon which reversal or modification of the protest decision is deemed warranted:

MAIL: Attn: DOAS Commissioner  
Department of Administrative Services  
200 Piedmont Ave., SE, Suite 1804 West

Atlanta, GA 30334-9010

FAX: 404-651-9595

EMAIL: [protests@doas.ga.gov](mailto:protests@doas.ga.gov)*Diagram of the Review/Appeal Process*

The DOAS Commissioner, in his or her sole discretion, may allow the party requesting formal review to make an oral presentation, and may solicit whatever other information he or she deems appropriate. However, issues not raised in the initial protest by the protestor or issues not raised in the initial request for formal review by the party requesting formal review may, at the discretion of the DOAS Commissioner, be deemed waived with prejudice. In the event the DOAS Commissioner elects to grant the request for an oral presentation and the DOAS Commissioner determines the oral presentation must be transcribed, the requesting party shall be required to pay the costs of the transcriptionist services, including one copy of the transcribed materials for the DOAS Commissioner's records.

## **1.9 Partnership with Georgia State Finance and Investment Commission**

DOAS has entered into an intergovernmental agreement with the Georgia State Finance and Investment Commission (“GSFIC”) transferring to GSFIC the authority to administer procurements and contracts for certain construction projects due to GSFIC’s expertise in construction matters. DOAS and GSFIC will jointly determine what construction projects GSFIC shall handle. In the event a vendor desires to file a protest as defined by Section 1.1 and the protest concerns a solicitation handled by GSFIC pursuant to the intergovernmental agreement between DOAS and GSFIC, the vendor shall file the protest in accordance with the instructions provided in GSFIC’s solicitation. GSFIC shall make a decision on the protest as expeditiously as possible after receiving all relevant requested information. Before issuing a written decision resolving the protest, GSFIC will notify the State Purchasing Division Assistant Commissioner of the intended resolution of the protest. After issuing a written decision resolving the protest, GSFIC will send a copy of the written decision to the State Purchasing Division Assistant Commissioner.

## **Section 2: Suspension or Debarment**

### **2.1 Causes for Debarment or Suspension**

The SPDAC may debar a vendor/contractor for any of the causes listed below:

1. Violation of Contract provisions, as set forth below, of a character which is regarded to be so serious as to justify debarment action:
  - a. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract;
  - b. A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts;
2. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a state vendor;
3. Conviction under state or federal antitrust statutes arising out of the submission of bids or proposal;
4. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance in the contract or subcontract;
5. Any other cause so serious and compelling as to affect responsibility as a state vendor, including debarment by another government entity; and
6. Any violations of the provisions of O.C.G.A. Sections 45-10-20 through O.C.G.A. Sections 45-10-28 which govern Conflicts of Interest.

## 2.2 Responsibilities of the APO/CUPO

The APO/CUPO shall submit a written request along with supporting documentation to the State Purchasing Division Assistant Commissioner requesting debarment action against a vendor/contractor where the causes of debarment stated above are met. The SPDAC will review the documentation and the stated reasons for the requested debarment and issue a written determination to the APO/CUPO on whether suspension or debarment is appropriate. The SPDAC may suspend the vendor/contractor pending a determination of the debarment. The SPDAC will not take suspension or debarment action against a vendor/contractor where the basis of the State Entity's request appears to be arbitrary or capricious, frivolous or without merit.

## 2.3 Suspension Procedures

1. Suspension procedures may be initiated after consultation with the SPD purchasing agent(s) or APO/CUPO(s), the Office of Legal Services, and where practicable, the vendor/contractor who is to be suspended, and upon written determination by the State Purchasing Division Assistant Commissioner that probable cause exists for debarment as hereinafter set forth, a vendor shall be suspended. A notice of suspension including a copy of such determination shall be sent to the suspended vendor/contractor. The notice shall state that:
  - a. The suspension is for the period it takes to complete an investigation into possible debarment including any appeal of a debarment decision but not for a period in excess of one hundred-twenty (120) days.
  - b. Bids or proposals will not be solicited from the suspended person, and, if they are received, they will not be considered during the period of suspension.
2. If a hearing has not been held, the suspended person may request a hearing in accordance with the procedures for suspension and debarment of vendors set forth in the vendor's manual.

## 2.4 Effect of Decision to Suspend

1. A vendor is suspended upon issuance of the notice of suspension. The suspension shall remain in effect during any appeals. The suspension may be ended by the officer who issued the notice of suspension, by the Commissioner of the Department of Administrative Services, or by a court of law, but otherwise shall only be ended when the suspension has been in effect for one hundred-twenty (120) days or a debarment decision has taken effect.
2. Written notice of the proposed debarment action shall be sent by certified mail, return receipt requested, to the vendor/contractor. This notice shall:
  - a. State that debarment is being considered;
  - b. Set forth the reasons for the action;



- c. State that, if the vendor so requests, a hearing will be held, provided such request is received by the SPDAC within ten (10) days after the vendor receives notice of the proposed action;
- d. State that the vendor may be represented by counsel.

## **2.5 Request for Hearing**

A vendor that has been notified of a suspension/proposed debarment action may request in writing that a hearing be held. Such request must be received by the SPDAC within ten (10) days of receipt of notice of the proposed action. If no request is received within the ten (10) day period, a final determination may be made as set forth hereinafter.

## **2.6 Hearing Procedures**

The APO/CUPO may be called upon as a witness and be requested to provide information pertinent to the suspension or proposed debarment.

1. Hearings shall be as informal as may be reasonable and appropriate under the circumstances and in accordance with applicable due process requirements. The weight to be attached to evidence presented in any particular form will be within the discretion of the hearing officer. The hearing officer may require evidence in addition to that offered by the parties.
2. The hearing may be recorded but need not be transcribed except at the request and expense of the vendor. A record of those present, identification of any written evidence, copies of all written statements, and a summary of the hearing shall be sufficient record.
3. Opening statements may be made unless a party waives this right.

## **2.7 Determination of Hearing Officer - Final Decision**

The hearing officer shall prepare a written determination and shall send copies thereof to the Commissioner of the Department of Administrative Services and to the vendor. The vendor shall have ten (10) days in which to file comments upon the hearing officer's determination. The Commissioner of the Department of Administrative Services may thereafter, in his or her sole discretion, request oral argument. The Commissioner of the Department of Administrative Services shall issue a final decision. Both the hearing officer's determination and the final decision shall recite the evidence relied upon. When debarment is recommended or ordered, the length of debarment (not to exceed five years), the reasons for such action, and to what extent affiliates are affected shall be set forth. In addition, the final determination shall inform the debarred person of his or her rights to judicial review.

A debarment decision shall take effect upon issuance and receipt by the vendor. After the debarment decision takes effect, the vendor shall remain debarred until the debarment period specified in the decision expires.

### **Section 3: Solicitation or Awards in Violation of the Law**

Any official of a State Entity or institution who willfully purchases or causes to be purchased any materials, supplies or equipment contrary to the rules and regulations shall be personally liable for the cost thereof. If paid for from State funds, the amount may be recovered in the name of the State.

### **Section 4: Purchase of Beef**

1. It shall be unlawful for the state; any branch, department, State Entity, board, or commission of the state; any county, municipality, board of education, or other political subdivision; or any officer, agent, or employee of any of the foregoing to purchase or authorize the purchase of any beef other than beef raised and produced within the United States when the purchase is to be made with governmental funds. The provision of this act shall not apply to canned meat which is not available from a source within the United States and which is not processed in the United States.
2. Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor.

### **Section 5: Taxes**

The State is prohibited from paying or reimbursing a vendor for certain taxes, which may be lawfully imposed on the vendor or on the property being provided. The State will, however, pay any taxes, which may be lawfully imposed on the vendor or on the property being provided and for which the State is legally obligated. The State will also pay any taxes, which may be lawfully imposed on it.

#### **5.1 State Taxes from which State Entities are Exempt**

1. Sales and Use Tax
2. Local Option Sales Tax
3. Marta Tax (Rapid Transit Tax)
4. Special Purpose Sales Tax
5. Hotel/Motel Excise Tax (with use of exemption form)

#### **5.2 State Taxes from which State Entities are not Exempt**

1. Motor Fuel Tax (except aviation fuel is not taxed; aviation gasoline is not exempt)
2. 2nd Motor Fuel Tax (except aviation fuel is exempt; aviation gasoline is not exempt)
3. GUST (Georgia Underground Storage Tank Act)
4. State Scrap Tire Fee (new tires only)

5. Hotel/Motel Sales Tax (exempt when bill paid directly by State Entity)

### **5.3 Federal Excise Taxes from which State Entities are Exempt**

1. Communications (Telephone and Telegraph)
2. Heavy Trucks, Trailers and Tractors
3. Tires
4. Gasoline (including Leaking Underground Storage Tanks [LUST] tax)
5. Gasohol
6. Diesel Motor Fuels
7. Firearms
8. Ammunition
9. Sport Fishing Equipment
10. Non-commercial Aviation Fuels
11. Gasoline
12. Fuels other than gasoline including jet fuel (Airport and airway trust fund tax)

### **5.4 Federal Excise Taxes from which State Entities are not Exempt**

1. Transportation of Persons by Air
2. Transportation of Property by Air
3. Gas Guzzler (except for Law Enforcement State Entities)
4. Certain Ozone Depleting Chemicals Tax
5. Taxes on Coal
6. Tax on Vaccines
7. Superfund Taxes on Petroleum Products

## **Section 6: Interest**

An opinion issued by the Attorney General in 1979 indicated that it might not be "appropriate" for State Entities to pay interest charges associated with contracts without specific approval from the Legislature.

The SPD sought and obtained authorization to pay interest on installment purchase contracts in the 1979 Legislative Session. This authorization does not extend to interest payments on outstanding principal balances associated with contracts other than conditional sales contracts.

## **Chapter 10: Intergovernmental Relations**

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### ***Section 1: ---- Reserved ----***

## Chapter 11: Assistance to Small and Minority Owned Businesses

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### Section 1: Minority Business Participation

It is the policy of the State of Georgia that small businesses and minority businesses have a fair and equal opportunity to participate in the State purchasing process, pursuant to the Governor's Executive Order issued on July 1, 1999.

The Executive Order states that "A[all] State Entities, authorities, commissions and institutions shall make an immediate concerted effort to increase the level of minority business participation in the state contracting process by increasing bid opportunities extended to the minority community and by providing more direct assistance to minority vendors on how the state contracting process works.

1. All bid documents shall include statements encouraging minority business participation and statements encouraging majority businesses to subcontract with minority businesses.
2. All bid documents shall include notification of the income tax credit that is available to any business that subcontracts with a minority-owned business.
3. All State Entities, authorities, commissions and institutions shall make special efforts to publicize and advertise bid opportunities to the minority business community including the use of minority-oriented media, and that notification be given to nonprofit organizations, publications and special interest groups whose primary membership includes or targets minority contractors.
4. SPD policy requires that the APO/CUPO solicit a minimum number of minority firms by dollar amount. (See Article III, Section 7, Section A "Minimum Bid Policy".)
5. All State Entities, authorities, commissions and institutions shall appoint a designee to act as liaison between their organization and minority vendors to provide one-on-one assistance and ensure that bid information is widely and appropriately disseminated; the name, address and telephone number of this individual is to be forwarded immediately to the Governor's Office and posted on all bid documents.
6. The State Entity's Minority Coordinator is responsible for the timely submission at the end of each calendar quarter of a Minority Business Utilization Report which includes the dollar amount awarded to minority vendors and minority businesses during the quarter. The report shall be submitted to the DOAS Vendor Relations Office.
7. DOAS will review information contained in the report when it conducts Purchasing Process Reviews.

## **Section 2: Georgia Income Tax Incentive**

1. In an effort to assist minority-owned businesses, the State of Georgia has a law that provides for an income tax adjustment on the state tax return of any company that subcontracts with a Certified minority-owned firm to furnish goods, property or services to the State of Georgia. This includes, but is not restricted to, the construction of any building or structure for the state. Beginning with Tax Year 1985, a corporation, partnership or individual is authorized to subtract from federal taxable income or federal adjusted gross income, ten (10) percent of the amount of qualified payments to Certified minority subcontractors when computing Georgia taxable income. [O.C.G.A. 48-7-38] The Georgia Department of Revenue manages the Tax Incentive Program.
2. A payment to a certified minority subcontractor is a qualified payment if: (1) the payment is for goods, property or services furnished by the minority subcontractor to the taxpayer and delivered by the taxpayer to the State in furtherance of a State contract to which taxpayer is a party, and the payment does not exceed the value of the goods, property or service to the taxpayer; (2) the payment is made during the taxable year for which the subtraction from the federal taxable income or federal adjusted gross income is claimed; or (3) the payment is made to a subcontractor who, at the time of the payment, is Certified as a minority subcontractor by the DOAS Vendor Relations. (Minority is defined as African American, Pacific Islander, Asian American, Hispanic/Latino or Native American). The total amount that may be subtracted from federal taxable income or federal adjusted gross income of any taxpayer in computing Georgia taxable income shall be limited to \$100,000.00 per taxable year.

To be a Certified minority subcontractor, a company must meet the definition of a minority-owned business and meet the following criteria: (1) be organized in the State of Georgia; or (2) report income from your business for Georgia income tax purposes; or (3) if minority stockholders, report earnings for Georgia income tax purposes.

## Chapter 12: Ethics in Public Procurement

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### ***Section 1: ---- Reserved ----***

## Glossary

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### Section 1: Commonly Used Acronyms

ACF	State Entity Contract - Fixed	IT	Information Technology
ACO	State Entity Contract - Open	ITB/IFB	Invitation to Bid/Invitation for Bid (See RFQ)
APO/CUPO	Agency, College, University Procurement Officer(s)	PAM	Purchasing Acquisition Manager
CAP	Contract Administration Plan	NIGP	National Institute of Governmental Purchasing
CDBG	Community Development Block Grants	OFM	Office of Fleet Management
CMBE	Certified Minority Business Enterprise	O.C.G.A.	Official Code of Georgia Annotated
CMSC	Certified Minority Subcontractor	PO	Purchase Order/Purchase Orders
CO	Contracting Officer	PA	Purchasing Agent
CTV	Complaint to Vendor	P-Card	Procurement Card
DOAS	Department of Administrative Services	PR	Purchase Requisition
DPA	Delegated Purchasing Authority	RFP	Request for Proposal(s)
EDP	Electronic Data Processing	RFQ	Request for Quote(s)
EPA	Environmental Protection State Entity	SAC	State Entity Contract
FOB	Free on Board	SPDAC	State Purchasing Division Assistant Commissioner
GPM	Georgia Procurement Manual	SPD	State Purchasing Division
GSBC	Governor's Small Business Center	SWC	Statewide Contract(s)
GTA	Georgia Technology Authority	VCO	Vendor Certification Officer
IPA	Installment Purchase Agreement	VR	Vendor Relations



## Section 2: Definitions

<b>Approving Official</b>	means an individual who has under his/her purview a number of cardholders.
<b>Architectural and Engineering Services</b>	<p>means</p> <ul style="list-style-type: none"><li>- Professional services of an architectural or engineering nature, as defined by State law, if applicable, which are required to be performed or approved by a person licensed, registered, or certified to provide such services.</li><li>- Professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property.</li><li>- Such other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including: studies, investigations, surveying, mapping, tests, evaluations, consultations, comprehensive, planning, program management, conceptual designs, plans and specifications.</li></ul>
<b>Best and Final Offer</b>	means the final proposal submitted after negotiations are completed that contains the vendor's most favorable terms for price and services or products to be delivered.
<b>Bid Bond</b>	means an insurance agreement, accompanied by a monetary commitment, by which a third party (the surety) accepts liability and guarantees that the bidder will not withdraw the bid, The bidder will furnish bonds as required, and if the contract is awarded to the bonded (insured) bidder, the bidder will accept the contract as bid, or else the surety will pay a specific amount.
<b>Business</b>	means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.
<b>Breach of Contract</b>	means failure to fulfill a contract, wholly or in part, without legal excuse.
<b>Cardholder</b>	means any individual designated by a State Entity to be issued a card.
<b>Card Controls</b>	<p>means controls coded to each card by the Purchasing Card Program Coordinator (PPC) as required by the issuing State Entity. Controls available as follows:</p> <ul style="list-style-type: none"><li>- Number of transactions per day/ month/ cycle</li></ul>

	<ul style="list-style-type: none"><li>- Dollar limit per transaction/ day/ month/ cycle</li><li>- SIC/MCC/MCCG codes blocked</li><li>- SIC/MCC/MCCG codes allowed (only)</li></ul>
<b>Chief Procurement Officer</b>	means the Commissioner who is the head of the central procurement office of the State. (See also State Purchasing Division Assistant Commissioner.)
<b>Competition</b>	means the effort of two or more vendors to secure the business of a purchaser by the offer of the most favorable terms as to price, quality, promptness of delivery, and/or service.
<b>Competitive Negotiation</b>	means a method for acquiring goods, services, and construction for public use in which discussions or negotiations may be conducted with responsible offerors who submit proposals in the competitive range.
<b>Contract</b>	means a legally binding promise, enforceable by law; an agreement between parties, usually exchanging goods or services for money or other consideration; all types of agreements, regardless of what they may be called, for the procurement or disposal of supplies, services, or construction.
<b>Contractor</b>	means any individual or business having a contract with a governmental body.
<b>Cost</b>	means actual expenses incurred in delivering a product, service, or construction.
<b>Construction Contract</b>	See “Public Works Contract”
<b>Construction</b>	means the process of building, altering, repairing, improving or demolishing any public infrastructure facility, including any public structure, public building, or other public improvements of any kind to real property.
<b>Contract Administration</b>	means oversight of all relationships between State Entities of the State of Georgia and the contractor relating to contractor performance. This includes performance monitoring, problem or dispute resolution, and closeout.
<b>Contracting Officer</b>	means a person with the authority to enter into, administer, and/or terminate contracts, and make related determinations and findings.
<b>Contract Modification</b>	means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provision of the contract, accomplished by mutual action of the parties to the contract.
<b>Contract Specialist</b>	means a person who monitors post award contracts and takes appropriate actions to ensure satisfactory contract progress, to assure compliance with the terms and conditions of the contract, negotiate contract modifications, and to identify and resolve problems that threaten contract performance.

<b>Day(s)</b>	unless otherwise stated, "day(s)" means calendar day(s).
<b>Debarment</b>	means the exclusion of a person or company from participating in a procurement activity for an extended period of time, as specified by law, because of previous illegal or irresponsible action.
<b>Default</b>	means a failure by a party of a contract to comply with contractual requirements.
<b>Delegation of Authority</b>	means the conferring of authority, by someone who has it, to another person, in order to accomplish a task.
<b>Design Specification</b>	means a specification establishing the characteristics an item must possess, including sufficient detail to show how it is to be manufactured.
<b>Designee</b>	means a duly authorized representative of a person holding a superior position.
<b>Electronic</b>	means electrical, digital, magnetic, optical, electromagnetic, or any other similar technology.
<b>Employee</b>	means an individual drawing a salary from a governmental body, whether elected or not, and any compensated individual performing personal services for any governmental body.
<b>End User</b>	means the State Entity requesting the procurement.
<b>Electronic Contact</b>	means the individual designated by a State Entity or institution to receive the electronic billing and reporting transmissions.
<b>Escalation Clause</b>	means a contract provision which permits the adjustment of contract prices by a given amount or percentage if certain specified contingencies occur, such as changes in the contractor's raw material or labor costs.
<b>Free on Board Destination</b>	means title changes hands from vendor to purchaser at the destination of the shipment; vendor owns goods in transit and files any claims. Payment of freight charges is determined by contract terms.
<b>Governmental Body</b>	means any department, commission, council, board, bureau, committee, institution, legislative body, State Entity, government, corporation, or other establishment or official of the executive, legislative, or judicial branch of the jurisdiction.
<b>Inter-Governmental</b>	means between State Entities; purchasing transactions between individual State Entities; purchase of an item by one State Entity from another State Entity and other governmental sources.
<b>Issuing Officer</b>	means the Purchasing Agent identified in the solicitation document as the Issuing Officer or an APO/CUPO authorized to sign Purchase Orders for user State Entities.
<b>May</b>	denotes the permissive.

<b>Minority</b>	means an individual who is a member of a race which comprises less than 50 percent of the total population of the State of Georgia.
<b>Minority-owned business</b>	means a business that is owned and controlled by one or more members of a minority race; or a partnership of which at least 51 percent (majority of interest) is owned and controlled by one or more members of a minority race; or a public corporation of which at least 51 percent of all of the common stock is owned by one or more members of a minority race.
<b>Performance Bond</b>	means a bond, executed subsequent to award by a successful bidder, to protect the buyer from loss due to the bidder's inability to complete the contract as agreed; secures the fulfillment of all contract requirements.
<b>Performance Specification</b>	means a specification setting forth the capabilities and performance characteristics the article must satisfy.
<b>Person</b>	means any business, individual, union, committee, club, other organization, or group of individuals.
<b>Political Subdivision</b>	means a subdivision of a state which has been delegated certain functions of local government. May include counties, cities, towns, villages, hamlets, boroughs, or parishes.
<b>Procurement</b>	means buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.
<b>Project Manager</b>	means a person who manages contractor activity, receives program status reports, provides technical guidance to the contractor and is responsible for ensuring the terms and conditions of the contract are met.
<b>Protest</b>	means a written objective by an interested party to an RFQ or RFP solicitation, or to a proposed award or award of a contract, with the intention of receiving a remedial result.
<b>Protestor</b>	means an actual bidder/offeror who is aggrieved in connection with a contract award and who files a protest in accordance with this section.
<b>Public Notice</b>	means an announcement, for example, by newspaper of general circulation or Internet, in reasonable time prior to the date and time of the event, to allow those interested to participate.
<b>Public Works Contract</b>	includes contracts for design, engineering, construction, alteration, modification, demolition, maintenance and repair, as well as consultant contracts relative to such activities. Public works contracts also include all public contracts that are covered by the statutory requirements for a payment or performance bond. As a general rule, if the contract is to be performed on

	public property and involves a fixed asset, the contract is a public works contract.
<b>Purchasing State Entity</b>	means any governmental body other than the Chief Procurement Officer, who is authorized by this Code or its implementing regulations, or by way of delegation from the Chief Procurement Officer, to enter into contracts.
<b>Purchasing Card Program Coordinator (PPC)</b>	means an individual designated by the ordering State Entity or institution to perform contract administration within the limits of delegated authority. This individual shall have overall responsibility for the Purchasing Card Program within his/her State Entity or institution and may determine who the approving officials and cardholders shall be.
<b>Reciprocity</b>	means a preference applied against a bidder whose home jurisdiction has preferences.
<b>Regulation</b>	means a governmental body's statement, having general or particular applicability and future effect, designed to implement, interpret, or prescribe law or policy, or describing organization, procedure, or practice requirements.
<b>Restrictive Specifications</b>	means specifications that unnecessarily limit competition by eliminating items capable of satisfactorily meeting actual needs, often by requiring features which exceed the minimum acceptable characteristics required for satisfactory performance.
<b>Scheduled Buy</b>	means the periodic grouped and combined bidding and one-time purchase of an item, for all requirements and users, for that period, with definite deliveries and quantities specified.
<b>Services</b>	means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This includes, but is not limited to, consulting, personal, professional, technical, and purchase-of-client services. This term shall not include employment agreements or collective bargaining agreements.
<b>Settlement Contact</b>	means the individual designated by a State Entity or institution to receive the official invoice and, in some instances, make payments against the official invoice.
<b>Shall</b>	denotes the imperative.
<b>Signature</b>	means a manual or electronic identifier or the electronic result of an authentication technique to or logically associated with a record that is intended by the person using it to have the same force and effect as a manual signature.
<b>Site Inspection</b>	means a visit to the actual location where the contract is to be performed by potential bidders or offerors to become familiar with site conditions.

<b>Small Business</b>	means a business, which is independently owned and operated. In addition, such business must have either fewer than 100 employees or less than \$1 million in gross receipts per year.
<b>Specification</b>	means a description of the physical or functional characteristics, or a description of the nature of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery. The SPD shall monitor the use of specifications for supplies, services, and construction required by the State.
<b>Standard Industrial Code (SIC)</b>	means a standardized code assigned to products or services based on their commodity types.
<b>State Entity</b>	means all departments, institutions, universities, authorities, commissions and boards, or other units of the State.
<b>State Purchasing Division Assistant Commissioner</b>	means the DOAS Commissioner's designee.
<b>Substitute</b>	means an item delivered by a vendor, in substitution of the specified and contracted for item on order, without permission or authorization.
<b>Supplies</b>	means all property, including but not limited to equipment, materials, printing, insurance, and leases of real property, excluding land or a permanent interest in land.
<b>Using State Entity</b>	means any governmental body of Georgia, which utilizes any supplies, services, or construction procured in accordance with jurisdictional regulations.
<b>Validation</b>	means the specific dollar amount a requisition has been validated for, to limit the purchase award, based on specific funds availability in a State Entity budget.
<b>Vendor</b>	means one who sells goods or services; a supplier.

# Appendix

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## Section 1: Standard Forms

**Note:** All forms that are referenced in the GPM are available on the State Purchasing Website under Resources→SPD Official Forms at

[http://statepurchasing.doas.ga.gov/00/channel\\_title/0,2094,35226973\\_76322813,00.html](http://statepurchasing.doas.ga.gov/00/channel_title/0,2094,35226973_76322813,00.html)

## **Section 2: Sample Contract Clauses**

### **2.1 Subcontracts/Assignment Clause**

Except as may be specifically permitted by the RFP, contractor shall not subcontract, assign or otherwise permit anyone other than contractor personnel to perform any of the work and/or provide any of the deliverables under this contract, or assign any of its rights or obligations hereunder, without the prior written consent of \_\_\_\_\_; provided, however, contractor may assign this contract to a successor corporate entity upon providing written notice to \_\_\_\_\_ and agreement by the successor entity to be bound by all of the terms and conditions of the contract. No subcontract which contractor enters into with respect to the performance of work and/or provision of deliverables under the contract shall in any way relieve contractor of any responsibility for any performance under the contract. Contractor shall give \_\_\_\_\_ immediate notice in writing by registered or certified mail of any action or suit filed against it by any subcontractor, and prompt notice of any claim made against contractor by any subcontractor or vendor which in the opinion of contractor may result in litigation related in any way to this contract with the state of Georgia.

### **2.2 Payment Clause**

For and in consideration of the deliverables provided pursuant to this agreement, \_\_\_\_\_ shall pay contractor the cost specified in contractor's proposal upon submission by contractor of a monthly invoice that complies with the requirements set forth in the RFP subject to approval by \_\_\_\_\_, the monthly invoices will be paid by \_\_\_\_\_ within thirty (30) days of the date the invoice is received by \_\_\_\_\_.

### **2.3 Payment Clause (Hourly Billing)**

Payment shall be made by \_\_\_\_\_ to contractor for services, which are actually performed in accordance with this contract. The amounts and terms for payment shall be \$\_\_\_\_\_ per hour, not to exceed \_\_\_\_\_ hours per year. Total labor shall not exceed \$\_\_\_\_\_ dollars and expenses shall not exceed \$\_\_\_\_\_ dollars. Total contract amount shall not exceed \$\_\_\_\_\_ dollars. Contractor shall be reimbursed for only those expenses, which shall be deemed by DOAS as actually and necessarily expended in connection with the performance of this contract and evidenced by receipts. Examples of such expenses are transportation, lodging, meals and mileage.

The contract rates specified shall not be increased at any time for the duration of this contract. In no event shall the total payments made hereunder exceed the amount of \$\_\_\_\_\_ dollars unless amended in writing in accordance with this contract. State vehicles will not be used by contractor personnel for the performance of services



under this contract and contractor shall be responsible for providing transportation necessary to perform services under this contract. The State Entity will pay contractor for mileage used by contractor personnel in driving their vehicles or contractor's vehicles for the purpose of performing this contract. Contractor shall be responsible for reimbursing contractor personnel for such mileage. Such mileage will be paid at the rates and under the terms and conditions set out in the policies governing State Entity employees. Charges shall be paid by \_\_\_\_\_ to contractor based on \_\_\_\_\_ approval and acceptance of the invoice relating to those charges. Within thirty (30) days after receipt and verification of such invoices, payment shall be made by \_\_\_\_\_. Invoices shall be submitted in triplicate to:

Title/license of materials produced. Except as otherwise expressly stated in this contract, all material produced by contractor in the performance of this contract, including but not limited to software, charts, graphs, diagrams, video tapes and other project documentation shall belong to the state of Georgia.

Severability. Any section, subsection, paragraph, term, condition, provision or other part (hereinafter collectively referred to as "part") of this contract which is judged, held, found or declared to be voidable, void, invalid, illegal or otherwise not fully enforceable shall not affect any other part of this contract, and the remainder of this contract shall continue to be of full force and effect. Any agreement of the parties to amend, modify, eliminate or otherwise change any part of this contract shall not affect any other part of this contract, and the remainder of this contract shall continue to be of full force and effect.

## 2.4 Limitation of Liability Clause

Except as otherwise provided in this contract, contractor shall not be liable to SPD and the State of Georgia for remote or consequential damages. Except as otherwise provided in this contract, liability to \_\_\_\_\_ and the State of Georgia for any and all claims of damages arising out of this agreement shall be limited to direct damages and shall not exceed the total amount paid to contractor for the performance of this contract. No limitation of contractor liability shall apply to contractor's liability for loss or damage to State of Georgia equipment or other property while such equipment or other property is in the sole care, custody and control of contractor personnel. Contractor hereby expressly agrees to assume all risk of loss or damage to any such State of Georgia equipment or other property in the care, custody and control of contractor personnel. Contractor further agrees that equipment transported by contractor personnel in a vehicle belonging to contractor, personnel (including any vehicle rented/leased by contractor or contractor personnel) shall be deemed to be in the sole care, custody and control of contractor personnel while being transported.

Nothing in this section shall limit contractor's indemnification liability arising from claims brought by any third party against \_\_\_\_\_ and the state.

## 2.5 Termination Clause

- A. \_\_\_\_\_ reserves the right to terminate this agreement for any reason upon giving sixty (60) days written notice to contractor. In the event that the written notice of termination pursuant to this section states that termination is for the convenience of \_\_\_\_\_, contractor shall be entitled to payment for 1) reasonable costs incurred through the date of the notice of termination (not the effective date of termination) and 2) charges for deliverables provided to \_\_\_\_\_ through the effective date of termination but only to the extent that funds designated for the deliverables are available to make payment.
- B. In the event that contractor breaches any term or condition of the agreement or any other event occurs which demonstrates a reasonable likelihood that contractor is unable or unwilling to fulfill its obligations under this agreement, \_\_\_\_\_ shall be entitled to immediately terminate this agreement. In the alternative, \_\_\_\_\_, in its sole discretion, may, upon request from contractor, provide contractor with twenty (20) days written notice that contractor may avoid termination of the agreement by curing, to the satisfaction of \_\_\_\_\_, the breach(es) identified in the written notice within a specified period not to exceed twenty (20) days. The determination of \_\_\_\_\_ as to the appropriateness of allowing contractor an opportunity to cure, and as to the time allowed for any such cure, shall be conclusive, based on consideration of the circumstances of the breach; on the consequences of the breach as to security and other critical aspects of operations, and, on the time constraints existing at the time of such breach. Any allowance of an opportunity to contractor to cure a specific breach shall not operate as a waiver by \_\_\_\_\_ of its right to refuse such an opportunity to cure in the event of any other breach, and shall not establish any course of dealing or performance between the parties.
- C. This agreement shall be immediately terminated in the event that any of the following occurs:
1. Contractor becomes insolvent or liquidation or dissolution of contractor begins;
  2. A voluntary or involuntary bankruptcy petition is filed by or against contractor under the U.S. bankruptcy code or any similar petition under any state insolvency law;
  3. An assignment is made by contractor for the benefit of creditors; or
  4. A proceeding for the appointment of a receiver, custodian, trustee or similar agent is initiated with respect to contractor.

- D. All records in the possession, custody or control of contractor, as they relate to the deliverables provided under this agreement, are the property of \_\_\_\_\_ and will be returned to \_\_\_\_\_ at no cost upon termination of this agreement.

## 2.6 Funding Clause

Notwithstanding any other provision of this agreement, the parties hereto acknowledge that \_\_\_\_\_, as a State Entity of the State of Georgia, is prohibited from pledging the state's credit. In the event that the source of payment for the total obligation no longer exists or is insufficient with respect to the deliverables, this agreement shall terminate without further obligation of \_\_\_\_\_ as of that moment. The determination of \_\_\_\_\_ of the events stated above shall be conclusive.

## 2.7 Contractor Accounting Requirements Clause

Contractor agrees to maintain books, records, documents, and other evidence pertaining to the costs and expenses of this agreement (collectively the "records") to the extent and in such detail as will properly reflect all payments received under this agreement. Contractor's accounting procedures and practices shall conform to GAAP and the costs properly applicable to the agreement shall be readily ascertainable there from.

### Records retention clause

Contractor agrees to make available at all reasonable times during the period set forth below any of the records of the contracted work for inspection or audit by any authorized representative of DOAS or the Georgia state auditor. Contractor shall preserve and make available its records for a period of five (5) years from the date of final payment under this agreement, and for such period, if any, as is required by applicable statute, by any other paragraph of the RFP or this agreement. If the agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of five (5) years from the date of any resulting final settlement. Records which relate to appeals, litigation, or the settlements of claims arising out of the performance of this agreement, or costs and expenses of any such agreement as to which exception has been taken by the state auditor or any of his duly authorized representatives, shall be retained by contractor until such appeals, litigation, claims or exceptions have been disposed of.

### Compliance with all Applicable Laws and Standards

In the performance of all work under this agreement, contractor shall comply with any and all laws and ordinances, and any and all rules, regulations and orders of public authorities hereto, whether federal, state or local. Contractor shall also comply with all applicable standards, policies and guidelines of the \_\_\_\_\_, or of any other organization or State Entity which govern the operations of the \_\_\_\_\_, including but not limited to those specified in the RFP.

## 2.8 Insurance Clause Sample 1

The following insurance coverage shall be obtained and maintained by contractor throughout the duration of the agreement. Except as otherwise expressly provided herein, all policies must be on an "occurrence" basis. All policies shall provide that contractor and its insurer(s) waive any right of subrogation against \_\_\_\_\_ and the State of Georgia.

A. Insurance Certificate:

Contractor shall procure and maintain insurance which shall protect the contractor and the state from any claims for bodily injury, property damage, or personal injury which may arise out of operations under the agreement. Contractor shall procure the insurance policies at the contractor's own expense and shall furnish the state an insurance certificate listing the state as certificate holder. The insurance certificate must document that the liability insurance coverage purchased by the contractor includes contractual liability coverage to protect the state. In addition, the insurance certificate must provide the following information:

1. Name and address of authorized agent
2. Name and address of insured
3. Name of insurance company (licensed to operate in Georgia)
4. Description of coverage in standard terminology
5. Policy period
6. Limits of liability
7. Name and address of certificate holder
8. Acknowledgment of notice of cancellation to the state
9. Signature of authorized agent
10. Telephone number of authorized agent
11. Details of policy exclusions in comments section of insurance certificate

B. Contractor also agrees to provide an insurance certificate to document that the following types of insurance coverage have been purchased by the contractor:

1. Workers' compensation insurance (occurrence) in the amounts of the statutory limits as established by the general assembly of the State of Georgia. (A self-insurer must submit a certificate from the Georgia board of workers' compensation stating the contractor qualifies to pay its own workers' compensation claims.) In addition, contractor shall require all subcontractors occupying the premises or performing work under this agreement to obtain an insurance certificate showing proof of workers' compensation coverage.

2. Commercial general liability policy (occurrence), to include contractual liability. The commercial general liability policy shall have dollar limits sufficient to insure that there is no gap in coverage between this policy and the commercial umbrella policy required in this agreement.
3. Business auto policy (occurrence), to include but not be limited to any owned, non-owned and hired auto liability. The business automobile policy shall have dollar limits sufficient to insure that there is no gap in coverage between this policy and the commercial umbrella policy required in this agreement.
4. Commercial umbrella policy (occurrence), which must provide the same or broader coverage than those provided for in the above commercial general liability and business auto policies. Policy limits for the commercial umbrella policy shall have an annual aggregate limit of \$\_\_\_\_\_.
5. Professional liability policy (claims made) which will be required on all privately contracted medical professionals (for example, physicians, nurses, psychiatrists, dentists, and pharmacists). Policy limits shall be \$\_\_\_\_\_ annual aggregate. This policy (and any required tail coverage) must provide and maintain a retroactive date to the date on which the contract commences as set forth in paragraph \_\_\_\_\_. When the contract is terminated or otherwise expires, the contractor must provide a five-year tail for reporting claims.

The foregoing policies shall contain a provision that coverage afforded under the policies will not be canceled, or not renewed or allowed to lapse for any reason until at least thirty (30) days prior written notice has been given to \_\_\_\_\_. Certificates of insurance showing such coverage to be in force shall be filed with \_\_\_\_\_ prior to commencement of any work under this agreement. The foregoing policies shall be obtained from insurance companies licensed to do business in Georgia and shall be with companies acceptable to \_\_\_\_\_. All such coverage shall remain in full force and effect during the initial term of the agreement and any renewal or extension thereof.

## 2.9 Insurance Clause Sample 2

**Insurance.** The following requirements shall be adhered to by contractors throughout the duration of the contract, and as may otherwise be specified herein. Contractor shall procure and maintain insurance, which shall protect the contractor and the state from any claims for bodily injury, property damage, or personal injury which may arise out of operations under the contract. Contractor shall procure the insurance policies at the contractor's own expense and shall furnish the state an insurance certificate of the coverage required in this section listing the state as certificate holder. In addition, the insurance certificate must provide the name and address of the insured, name, address, telephone number and signature of the

authorized agent; the name of the insurance company (licensed to operate in Georgia); a description of coverage in detailed standard terminology (including policy period, limits of liability, exclusions and endorsements); and, an acknowledgment that notice of cancellation is required to be given to the state. Contractor is required to obtain and maintain the following types of insurance coverage for the duration of the contract:

A. Workers' Compensation Insurance:

The purpose of Workers' Compensation Insurance is to insure the statutory limits as established by the general assembly of the state. (Note: A self-insurer must submit a certificate from the Georgia state board of workers' compensation stating the contractor qualifies to pay its own workers' compensation claims.) The workers' compensation policy must include coverage with employer's liability limits of:

Bodily injury by accident	\$500,000 each accident
Bodily injury by disease	\$500,000 each employee
	\$1,000,000 policy limits

Contractor shall require all subcontractors performing work under this contract to obtain an insurance certificate showing proof of workers' compensation coverage.

B. Commercial General Liability Policy:

Combined single limits:	\$1,000,000 per person
	\$3,000,000 per occurrence

The commercial general liability policy shall include contractual liability coverage to protect the state and must be on an "occurrence" basis.

C. Business Automobile Liability Policy:

Combined single limits:	\$1,000,000 per person
	\$3,000,000 per occurrence

D. Malpractice/professional liability policy with EDP and errors and omissions coverage:

Notwithstanding any other provisions herein to the contrary, the malpractice/professional liability policy with EDP and errors and omissions coverage may be on a "claims made" basis. It must provide liability limits of:

	\$3,000,000 per occurrence
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Except as otherwise expressly stated herein, all policies must be on an "occurrence" basis.

The foregoing policies shall contain a provision that coverage afforded under the policies will not be canceled, or not renewed or allowed to lapse for any reason until

at least thirty (30) days prior written notice has been given to DOAS. Certificates of insurance showing such coverage to be in force shall be filed with DOAS no later than fourteen (14) calendar days after the commencement of any work under this contract. The foregoing policies shall be obtained from insurance companies licensed to do business in Georgia and shall be with companies acceptable to DOAS. It shall be the responsibility of contractor to require any subcontractor to secure the same insurance coverage as prescribed herein for contractor, and to obtain a certificate or certificates evidencing that such insurance is in effect. In addition, contractor shall indemnify and save harmless DOAS from any liability arising out of contractor's or subcontractor's untimely failure in securing adequate insurance coverage as prescribed herein. All such coverage shall remain in full force and effect during the initial term of the contract and any renewal or extension thereof.

## **2.10 Indemnification Clause**

Contractor hereby waives, releases, relinquishes, discharges and agrees to indemnify, protect and save harmless the State of Georgia (including the state tort claims trust fund), \_\_\_\_\_, DOAS, their officers and employees (collectively "indemnitees") of and from any and all claims, demands, liabilities, loss, costs or expenses for any loss or damage for bodily injury (including but not limited to death), personal injury and property damage caused by any act or omission of contractor, its employees, agents, subcontractors or any other party acting on behalf of contractor (collectively, the "indemnity claims").

This indemnification extends to the successors and assigns of the contractor, and this indemnification and release survives the termination of this agreement and shall also survive the dissolution or, to the extent allowed by law, the bankruptcy of the contractor.

If and to the extent such damage or loss as covered by this indemnification is covered by the state tort claims fund or any other self-insurance funds maintained by the Department of Administrative Services (collectively, the "funds"), the contractor agrees to reimburse the funds for such funds paid out by the funds. To the full extent permitted by the constitution and the laws of the State of Georgia and the terms of the funds, the contractor and its insurers waive any right of subrogation against the State of Georgia, the indemnitees, and the funds and insurers participating thereunder, to the full extent of this indemnification.

Contractor shall, at its expense, procure the insurance policies required by this agreement, in coverage amounts as specified in this agreement, with endorsements waiving rights of subrogation against the state, the indemnitees, the funds and insurers participating thereunder.

Contractor shall, at its expense, be entitled to and shall have the duty to participate in the defense of any suit against the indemnitees. No settlement or compromise of any claim, loss or damage asserted against indemnitees shall be binding upon indemnitees unless expressly approved by the indemnitees.



## 2.11 Drug-Free Workplace Clause

Contractor hereby certifies as follows:

1. Contractor will not engage in the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of this agreement.
2. If contractor has more than one employee, including contractor, contractor shall provide for such employees a drug-free workplace, as defined under Official Code of Georgia Annotated ("O.C.G.A.") sections 50-24-2(5) and 50-24-3(b), throughout the duration of this agreement.
  - a. Contractor will secure from any subcontractor hired to work in a drug-free workplace the following written certification:
  - b. As part of the subcontracting agreement with (contractor's name), (subcontractor's name) certifies to contractor that a drug-free workplace will be provided for the subcontractor's employees during the performance of this agreement pursuant to paragraph 7 of subsection b of O.C.G.A. 50-24-3.
  - c. Contractor may be suspended, terminated, or debarred if it is determined that:
  - d. Contractor has made false certification hereinabove; or
  - e. Contractor has violated such certification by failure to carry out the requirements of Official Code of Georgia section 50-24-3.

## 2.12 Taxes Clause

Contractor will forthwith pay all taxes lawfully imposed upon it with respect to this agreement. By this paragraph, \_\_\_\_\_ makes no representation whatsoever as to the liability or exemption from liability of contractor to any tax imposed by any governmental entity.

The RFP (and any documents referenced therein) and contractor's proposal (including any best and final offer) are incorporated into this agreement by reference and form an integral part of this agreement. In the event of a conflict between the language of the RFP and the contractor's proposal, the language in the RFP shall govern. In the event of a conflict between the language of this agreement and any other document or instrument incorporated herein, the language of this agreement shall govern.

## 2.13 Cure and Cover Clause

If contractor fails or SPD reasonably concludes that there is a reasonable likelihood that contractor will not be able to timely perform all of its obligations under this contract, SPD may (in addition to any other contractual, legal or equitable remedies) proceed to take any of the following actions after five (5) days written notice to contractor:

- A. Withhold any monies then or next due to contractor; or



- B. Terminate the contract and obtain the deliverables (or equivalent) or portion thereof (or equivalent) from a third party, pay the third party for same, and withhold the amount so paid from any money then or thereafter due contractor and hold contractor liable for any amounts paid to the third party (or parties) to the extent that withholding payments to contractor does not cover SPD's costs of cover.
- C. If \_\_\_\_\_ determines that the above nonexclusive remedies are impracticable or would cause undue delay, \_\_\_\_\_ may allow contractor to continue performance under this contract but assess liquidated damages in the amount of 1% of the total contract price for each day that contractor has failed to meet any requirement of the contract.

## **2.14 Reporting Requirements Clause**

In addition to any reporting requirements in the RFP, contractor shall provide monthly reports to SPD to report the status of contractor's performance under the contract and contractor's progress toward fulfilling the requirements of the contract.

## **2.15 Relationship of the Parties Clause**

Contractor warrants that all work performed by or on behalf of contractor under this contract shall be performed as an independent contractor. Contractor shall be responsible for compliance with all laws, rules and regulations involving their respective employees, including (but not limited to) employment of labor, hours of labor, health and safety, working conditions, workers' compensation insurance, and payment of wages and contractor agrees to indemnify and hold harmless \_\_\_\_\_ and the State of Georgia from any loss resulting from the breach of these warranties. This contract shall not be construed so as to create a partnership or joint venture between contractor and the state or any of its State Entities.

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